BRITISH
COLUMBIA

FINANCIAL INSTITUTIONS AND THEIR AGENTS
REVIEW OF BRITISH COLUMBIA'S
REGULATORY LEGISLATION

DISCUSSION PAPER - VOLUME II

Final Draft
June 2003

Ministry of Finance
Province of British Columbia

This page intentionally blank

104-07685/

Table of Contents

ORGANIZATION OF VOLUME II 1

BACKGROUND SUMMARY 1

BC INDUSTRY STRUCTURE 1

RECENT EVOLUTION OF THE BC REGULATORY FRAMEWORK 3

COMPARATIVE REVIEW OF KEY CANADIAN JURISDICTIONS 4

INTERNATIONAL DEVELOPMENTS 6

Current Thinking 6
Recent Developments 6

APPENDIX A: COMPARATIVE REVIEW 8

CREDIT UNIONS AND COOPERATIVES 9

Jurisdiction: Federal Government 9
Jurisdiction – Alberta 24
Jurisdiction – Ontario 39
Jurisdiction – Saskatchewan 53

TRUST COMPANIES 68

Jurisdiction – Federal government 68
Jurisdiction – Alberta 82
Jurisdiction – Ontario 98
Jurisdiction – Saskatchewan 99

INSURANCE 112

Jurisdiction: Federal Government 112
Jurisdiction – Alberta 127
Jurisdiction – Ontario 144
Jurisdiction – Saskatchewan 156

MARKET CONDUCT 167

Jurisdiction – Federal Government 167
Jurisdiction – Alberta 170
Jurisdiction – Ontario 176
Jurisdiction – Saskatchewan 181

APPENDIX B: ANNOTATED BIBLIOGRAPHY 186

CURRENT THINKING – FINANCIAL SECTOR REGULATORY REFORM 186

RECENT CANADIAN AND INTERNATIONAL DEVELOPMENTS 197

Reform of Canadian (Federal) Financial Sector Regulation 197
United Kingdom – Financial Services Authority 198
Australian, Commonwealth (Federal) Government - Prudential Regulation Authority 198
Universal Bank Charters – US States 199
New Basel Capital Accord 201

ORGANIZATION OF VOLUME II

This is Volume II to the report "Financial Institutions and their Agents: Review of British Columbia's Regulatory Legislation – Initial Discussion Paper".

This volume includes a background summary providing some basic information as context for the analysis in Volume I of this report as well as more detailed appendices comparing legislative provisions in select Canadian jurisdictions and discussing current thinking and recent developments in financial sector regulation.

BACKGROUND SUMMARY

This section of the report summarizes:

- the current structure of the industry in British Columbia;
- the recent evolution of the regulatory framework in British Columbia;
- the comparative review of the financial services sector regulatory frameworks in key Canadian jurisdictions; and
- international developments in financial sector regulation.

BC Industry Structure

This review is primarily concerned with financial institutions and other entities (such as agents and adjusters) involved in businesses regulated by the *Financial Institutions Act* – deposit business, trust business and insurance business. There are other financial services that are also regulated by the provincial government, including the broad categories of securities market services and pension funds that are not within the scope of this report. The British Columbia Securities Commission is undertaking a separate regulatory review of securities regulation.[1]

A related business that is also regulated by FICOM is real estate business. Real estate services are not included in this review. Mortgage brokering, though often undertaken as an agent for a financial institution, has traditionally been viewed as an adjunct to real estate services and thus is also not specifically covered under this review.

Regulation of the financial services sector is complicated by the number of jurisdictions involved in regulatory activity. This is due in part to the fact that banking is a constitutional responsibility of the federal government. Other financial institution businesses (non-bank deposit business, trust business and insurance business) have evolved to be regulated both provincially and federally, usually based upon the jurisdiction of incorporation and the jurisdictions of operation. Thus, a federally or provincially incorporated financial institution can be subject to regulatory requirements imposed by several different jurisdictions if it operates in several provinces. Also complicating the issue is that fact that the so-called pillars of the financial sector are breaking down, with firms operating in the sector increasingly offering a greater range of financial services, either directly of through parents, subsidiaries, joint ventures, partnerships and other forms of business alliance.

---

[1] See British Columbia Securities Commission, New Concepts for Securities Regulation, February 18, 2002, available at www.bcsc.bc.ca/Policy/dereg.asp.

The following table provides a breakdown of the structure of the entire financial services sector in British Columbia. Employment in the sector represented about 6% of employment in the province in 2000.

Employment in the BC Financial Services Sector, 2000

	Employment	Percent
Banking, credit unions and other deposit-taking institutions	41,700	35%
Real estate	29,500	25%
Insurance carriers and agents	27,700	23%
Securities firms, commodity brokers and other intermediaries	11,200	9%
Other - including rental and leasing	9,400	8%
Total	119,500	100%

Source: Business Council of BC, A Profile of BC's Financial Services Sector, October 2001

The following table provides an overview of the financial services sector structure in British Columbia, including the number and size of institutions operating here, identifying provincial, extraprovincial, federal and foreign firms separately, and providing information on some key economic indicators for the various sectors.

Overview of British Columbia Financial Institutions and their Agents

Type of Institution	Number	Assets ($ millions)	Capital ($ millions)	Revenue ($ millions)	Net income ($ millions)
Credit Unions	66	25,150	1,344	1,742	96
Trust Companies					
Trust and Deposit	41	63,771	5,619	1,698	644
Trust Only	7	15	11	5	0
Deposit Only	5	35,806	3,120	1,881	227
Life Insurance Companies					
Provincial	2	*161*	*57*	*208*	*1*
Other Provinces	11	16,832	1,998	89	238
Federal	46	187,077	32,855	2,490	3,897
Foreign	42	20,353	4,524	327	255
Property & Casualty Insurers					
Provincial	7	251	56	47	5
Other Provinces	19	4,339	923	88	79
Federal	71	41,289	10,415	1,347	296
Foreign	57	1,357	562	83	12
Market Intermediaries:					
Life Agents	9,631				
Property & Casualty Brokers/Agents	8,642				
Restricted Motor Vehicle	1.087				
Restricted Travel	3,245				
Adjusters	542				

Recent Evolution of the BC Regulatory Framework

British Columbia undertook a major reform of its financial institutions – credit union, trust and loan companies and insurance companies – legislative and regulatory framework in the late 1980s, culminating in the passage of the *Financial Institutions Act* and the *Credit Union Incorporation Act* (CUIA) in June of 1989. The impetus for the comprehensive reform of the financial institutions legislation in British Columbia was that the regulatory framework was extremely out-dated and minor amendments throughout the years had not kept pace with developments and trends in the financial marketplace. Additionally, several significant failures in the early 1980s in Canadian banks, trust and loan companies and the collapse of the Principal group of companies heralded the need for a comprehensive examination of the British Columbia financial sector regulatory regime.

The goal of the financial institution legislative reform exercise was to establish an "up-to-date and effective regulatory framework which facilitates the operation of financial markets and financial institutions in British Columbia while providing enhanced public protection" (*Financial Institutions Act – Major Policy Proposals*, October 20, 1988).

The major themes of the new legislation were

- an effective, yet flexible corporate framework – incorporation requirements were designed to be uniform across all types of financial institutions and incorporation procedures were designed to be relatively, yet, allow only *bona fide* institutions to incorporate
- flexibility, especially in investment and lending rules and business powers, which apply equally to all types of financial institutions, to allow British Columbia firms to diversify and be competitive, while providing safeguards for consumers
- increased emphasis and reliance on corporate governance and internal management through enhanced requirements placed on directors, officers and auditors of financial institutions and comprehensive rules restricting transactions between related parties and requiring disclosure of conflicts of interest
- a comprehensive approach to the marketing of financial products and rules related to market conduct.

The *Financial Institutions Act* also established a new and innovative approach to the regulation of the financial institutions sector. It created one regulatory entity, the Financial Institutions Commission (FICOM), responsible for the regulation of credit unions, trust companies and insurance companies to ensure consistent treatment and regulatory application in an increasingly integrated marketplace. The Financial Institutions Commission was provided with a comprehensive range of enforcement provisions, consistent with a graduated approach to requiring compliance with the Act.

Another key element of the *Financial Institutions Act* was the modernization of the treatment and regulation of the credit union sector. As noted earlier, all types of financial institutions operating in British Columbia were provided with similar business powers. To create equity in the marketplace and facilitate credit unions' ability to compete with other financial institutions, British Columbia also extended the power and capacity of credit unions to issue publicly traded shares. As well, the Act took some initial steps to move the system to greater self regulation through the creation of Stabilization Central which is responsible for the certain levels of stabilization for credit unions experiencing financial difficulties.

Since the passage of the *Financial Institutions Act*, there has been significant change in the nature and size of the credit union system in BC. In 1990, the system was relatively diverse with 111 credit unions with assets totaling $10.4 billion. Today there are 66 credit unions with assets totaling $25.1 billion. In April 1992, 80 percent of assets were held in the largest 20 percent of credit unions. This 80/20 rule holds true today, but in 1992, there were 21 credit unions in this group and in 2001 there were 14.

Comparative Review of Key Canadian Jurisdictions

A detailed comparative review of the key regulatory elements that apply to financial institutions and their agents in key Canadian jurisdictions has been undertaken and is available in detail in Appendix A.

Some of the general observations and conclusions that can be drawn from the comparative review of jurisdictions include:

- In the late 1980s and early to mid 1990s, certain key jurisdictions in Canada, including British Columbia, the federal government, Ontario and Alberta, undertook major overhauls of their financial institutions legislative and regulatory regimes[2].
- Key, general themes in these legislative reform initiatives were:
  - the upgrading of prudential regulatory requirements (including introduction of risk weighted capital adequacy rules, prudent investment and lending approaches);
  - the enhancement of internal and management controls and corporate governance provisions;
  - the streamlining of regulatory requirements and approvals with specific emphasis on rationalizing the treatment of extraprovincial companies; and
  - the enhancement of market conduct rules and behaviour.
- As part of the financial sector reform movement in Canada over the last decade, several jurisdictions upgraded and modernized the regulation of credit unions. Notwithstanding this, several jurisdictions have not yet adopted a comprehensive prudential regulatory approach to credit unions (including a full risk weighted approach to capital adequacy), and many have maintained a relatively high degree of government control over the supervision and stabilization of credit unions.
- Recently, in response to continuing technological change, market developments and broader government direction to review the efficiency and effectiveness of regulatory environments generally, several jurisdictions have again turned their attention to modernization of their financial regulatory regimes. This includes:
  - the federal government, which introduced major reforms to its financial sector legislation in June 2001 (the federal financial sector reform is discussed further below and a summary is included in Appendix B);
  - Ontario, which in 2001 took a significant new direction with respect to loan and trust corporations under which the province will no longer incorporate or regulate loan and trust corporations;
  - Alberta, which passed a new *Insurance Act* in 2001;
  - Manitoba which has recently launched a comprehensive review of its insurance legislation;
  - the four Atlantic provinces which are developing a standard, model *Insurance Act*; and
- the Canadian Council of Insurance Regulators which has just established a Streamlining and Harmonization Working Group whose mandate, over the next two years, is to "reduce unnecessary regulatory burden on the insurance industry through greater streamlining and harmonization while maintaining existing levels of regulatory protection provided to the consumers of insurance products".

---

[2] Saskatchewan passed a new *Trust and Loan Corporations Act* in 1997 and a new *Credit Union Act* in 1998.

International Developments

Appendix B provides an annotated bibliography of some current literature and recent reports related to regulatory reform of the financial services sector. The following sections summarize the highlights of the information provided in that appendix.

CURRENT THINKING

The review of literature on financial sector regulation indicates considerable consensus about the goal of regulation of the financial sector – essentially, to enhance stability in the economy through ensuring financial institution stability, safety and soundness, and promoting consumer protection. There is also a high degree of agreement about the fundamental elements that comprise an effective regulatory regime. These include:

- a sound institutional and market structure, including a legal and regulatory framework supporting an array of financial markets and instruments;
- a system of market discipline and competition created through incentives to exert discipline and the removal of unnecessary barriers and restrictions to promote competition; and
- an independent supervisory and regulatory authority supported by the necessary prudential/ regulatory framework and with sufficient resources and powers to carry out its supervisory function efficiently and effectively.

There is, however, some divergence in thinking with respect to the specific rules necessary for a sound legal and regulatory framework and the exact structure and specific regulatory approach and tools to achieve effective and efficient regulation. For example, some academics are questioning the need for the traditional restrictions around financial/commercial ownership, other ownership and entry restrictions and the mixing of commercial and financial businesses. There is a developing body of research to support the position that these rules are ineffective in achieving the objectives of financial sector regulation. The argument is that an emphasis on prudential regulation and internal risk management is more effective in ensuring the stability and soundness of financial institutions.

There is also some questioning at to what constitutes the "best" regulatory structure and approach. Over the past several years, several world authorities have focused on developing and establishing standard approaches and rules of effective financial supervision and regulation (World Bank, Basel Committee, Financial Stability Forum). Despite these efforts, some argue that there is no one best approach to regulation or one best set of specific rules and regulatory instruments. It is the view of these academics that the exact regulatory structure and framework for each jurisdiction should be based on an assessment of the nature and scope and the maturity of the system, and the specific public policy objectives for the financial sector in that jurisdiction.

RECENT DEVELOPMENTS

The key observation from recent financial sector regulatory reform initiatives is that there has been a fundamental change in the basic attitude and approach to regulation. In response to recent market trends and developments, recent reforms have significantly altered regulatory structures to more effectively regulate an integrated financial marketplace.

Some jurisdictions have made a deliberate shift from industry or sectoral specific regulation to integrated or functional regulation. The United Kingdom recently established a single financial services authority responsible for all banking supervision and investment services regulation. The federal government in Australia collapsed a myriad of regulatory authorities into two general bodies, one responsible for the comprehensive regulation of banks, life insurers, general insurers, building societies, credit unions, friendly societies and superannuation funds and the other responsible for all product disclosure standards, consumer complaints and the licensing of agents and brokers

Other jurisdictions, including United States and Canada at the federal level, are considering, or have implemented, changes to ensure competitive equity and regulatory simplification. Certain US states have adopted or are considering a universal charter approach to banking institutions; an approach that addresses regulatory structure and simplification as well as competitive equity issues. A key theme of the 2001 reform of Canada's federal financial sector legislation was to promote efficiency and growth and facilitate competition. Changes to the regulatory framework designed to achieve this include liberalizing ownership rules and minimum capital requirements to encourage new entrants, altering widely-held ownership requirements to allow strategic alliances and providing for greater structural flexibility through new holding company regimes.

Another theme is the emphasis on prudential regulation through risk management by both supervisory authorities and financial institutions. Some jurisdictions, notably, the United Kingdom and Australia, have explicitly adopted the principle of proportionality to direct regulatory effort specifically to high risk areas.

The Basel Committee of the Bank for International Settlements is also currently engaged in a process to update its capital adequacy approach to address issues with the current system and make the approach more flexible, risk sensitive and to place greater emphasis on a bank's own internal methodologies, supervisory review and market discipline.

APPENDIX A: COMPARATIVE REVIEW

This appendix includes overviews of credit union legislation, insurance company legislation, trust and loan company legislation, and legislation respecting market conduct for Alberta, Saskatchewan, Ontario and the federal government. These jurisdictions were chosen for review because significant legislative reform has been undertaken in over the last 10 to 12 years. These overviews were prepared based on current legislation (including, in some cases, amendments passed but not yet proclaimed).

Credit Unions and Cooperatives

JURISDICTION: FEDERAL GOVERNMENT

Regulatory Approach

Activity or Entity	Regulatory approach is based on the regulation of the entity - credit cooperatives - versus the financial activity.
Nature of Approach	Generally, each credit cooperative is subject to the same level of regulation.

Corporate Framework

Incorporation

Method of Incorporation

On application by two or more persons, the Minister may issue letters patent incorporating an association. Prospective incorporators must publish notice of intent to incorporate in the Gazette or in a newspaper in general circulation at or near the place the head office is to be situated; any person who objects to the incorporation may submit an objection to the Superintendent who must inform the Minister. The application to incorporate is filed with the Superintendent. If satisfied that it is necessary and in the public interest, the Superintendent may hold a public inquiry into the objection to the application and make a report to the Minister. The Minister shall make the report available to the public.

Incorporation Requirements

Applicants must be persons who are entitled to be members of an association, and must include at least two central cooperative credit societies, not all of which are incorporated under the laws of one province; ten local cooperative credit societies, not all of which are incorporated under the laws of one province; or two or more leagues not all of which are incorporated under the laws of one province.

Before issuing letters patent, the Minister shall take into account all relevant matters, including:

- the nature and sufficiency of the financial resources of the applicant,
- the soundness and feasibility of the business plans and the business record and experience of the applicant,
- the character and integrity of the applicant,
- whether the association will be operated responsibly by persons with the competence and experience suitable for involvement in the operation of a financial institution,
- the impact of the integration of the operations of the applicant with those of the association on the conduct of those operations,
- whether the association is to be operated in accordance with cooperative principles; and
- the best interests of the financial system in Canada, particularly, the cooperative financial system.

Incorporation Restrictions

The legislation contains provisions and restrictions regarding names of associations, including that an association must not use a name prohibited by an Act of Parliament, a name that the Superintendent believes is "deceptively misdescriptive" or will cause confusion. The name must include the word "cooperative"

Significant Changes

Types of Changes

Continuance - a body corporate incorporated under the *Canada Business Corporations Act*, or any other Act of parliament, or otherwise than by an Act of Parliament if authorized by the laws of the jurisdiction where it is incorporated, may apply to the Minister for letters patent continuing the body corporate as an association.

A body corporate incorporated or continued otherwise than under the legislation, may apply to the Minister for letters patent continuing the body corporate as an association for the purpose of amalgamating with another body corporate.

Transferring to Other Federal Acts – an association may

- apply for letters patent under the *Trust Company Act* to continue as a company under that Act, or for amalgamating and continuing as a company;
- apply for letters patent under the *Bank Act* to continue as a bank or bank holding company, or for amalgamating and continuing as a bank or bank holding company; or
- with the approval of the Minister, apply for a certificate of continuance under the *Canada Business Corporations Act* or apply for certificate of continuance, or continuance and amalgamation under the *Canada Cooperatives Act.*

Amalgamations – two or more bodies corporate incorporated under an Act of Parliament, including associations may apply to the Minister for letters patent amalgamating and continuing the applicants as one association. There is also provision for "horizontal short-form amalgamation" where the bodies corporate proposing to amalgamate include at least one association and all the applicants are wholly-owned subsidiaries of the same holding body corporate.

Transfer of Business – the process for allowing an association to or sell all or substantially all of its assets and transfer all or substantially all of its liabilities to a federal financial institution, a central cooperative credit society, a bank holding company or an authorized foreign bank.

Requirements Related to Significant Changes

The Minister will not grant approval for a continuance or discontinuance unless it has been authorized by special resolution of the members. All assets and liabilities of the body corporate or association that is to be continued or discontinued must also be accounted for. The Minister must also be satisfied that the association holds no deposits insured by CDIC.

Each amalgamating body corporate must enter into an amalgamation agreement and the agreement must be approved by special resolution of the members. Each association planning to sell its assets must submit a "sale agreement" to its members for approval by special resolution

The Minister will not approve an amalgamation and issue letters patent unless the new association meets the capital and corporate structure requirements under the legislation. The Minister must approve a "sale agreement".

Dissolution

Various types of liquidation and dissolution are provided for under the legislation, including:

Simple liquidation – where the association has no property and no liabilities, the Minister, on application may issue letters patent dissolving the association;

Voluntary liquidation and dissolution – may be initiated by directors or a proposal made by a member; if the proposal to liquidate is passed by a special resolution of members, the Minister may, if satisfied that the circumstances warrant voluntary liquidation and dissolution, issue letters patent dissolving the association;

Court supervised liquidation – the Superintendent or an interested party may at any time during the liquidation of an association, apply to the court for an order for the continuance of the voluntary liquidation under the supervision of the court and where the court makes such an order it may appoint a liquidator.

Ownership Restrictions

No person or entity controlled by a person shall, without the approval of the Minister, purchase in aggregate more than 30 percent of the equity of the association.

Membership

Only associations, central credit cooperative credit societies, local cooperative credit societies, cooperative corporations, leagues, deposit protection agencies, or an unincorporated organization consisting entirely of those entities that are eligible for membership may be admitted to membership in an association.

The membership of an association must include at least: an association, two central cooperative credit societies not all of which are incorporated under the laws of the same province, ten local cooperative societies not all of which are incorporated under the laws of the same province, or tow or more leagues not all of which are incorporated under the laws of the same province. If these minimum membership requirements are not attained or sustained, the association must immediately take steps to apply for continuance or liquidate and dissolve.

Shares

Membership Shares

An association may issue membership shares to members and members must hold the minimum number of membership shares as provided by the association's by-laws.

Other Types

In addition to membership shares, an association may issue shares to such persons the association may determine.

General Restrictions/ Prohibitions

Both membership shares and other shares of the association must be issued without nominal or par value.

There are restrictions and limitations on an association, or its subsidiaries, holding shares in the association, subject to some exceptions, including for redemptions, holding as a personal representative, or as a security interest..

Corporate Governance

Board Committees

The directors of an association must

- establish an audit committee [see section on "Reporting and Audit";
- establish a conduct review committee responsible for reviewing policies and procedures established by management respecting self dealing. The committee must be composed of at lest three directors, none of which may be a officer involved in the day-to-day operations of the association or employee of the association or subsidiary of the association;
- designate a committee to monitor conflict of interest procedures established by the board;
- designate a committee to monitor the procedures of the board established for providing disclosure of information to customers and dealing with complaints.

Standard of Care for Directors and Officers

The directors of a company are responsible for managing or supervising the management of the business and affairs of the association.

Every director (and officer) must in carrying out his or her duties act honestly and in good faith with a view to the best interests of the association, and exercise the care, diligence and skill that a reasonably prudent person would exercise incomparable circumstances.

Directors Qualifications

An association must have at least seven directors and an individual is disqualified from being a director if the individual

- is less than eighteen years of age;
- is found to be of unsound mind,
- has the status of a bankrupt;
- is a person who is an agent, employee or Minister of the federal or provincial government or an agent or employee of a foreign government.

At least two-thirds of the directors of an association must be resident Canadians.

Director's Training

No provisions.

Resignation/ Removal of Directors

The members of an association may by special resolution remove a director from office. A director who resigns or receives notice of a meeting called for the purpose of removing him or her from office, or where another person is to be appointed to fill the office of the director because of resignation or removal, is entitled to submit to the association a written statement giving the reasons for the resignation or why the director opposes the proposed action or resolution. Where a director resigns because of a disagreement with the other directors or officer of the association, the director must submit to the association and the Superintendent a written statement setting out the nature of the disagreement. The association must distribute such a statement to members.

Operations

Deposit Taking

An association may receive money on deposit form the Government of Canada, a province, a municipality or their agents, and a deposit protection agency. An association must not receive money on deposit for a local cooperative credit society, or a cooperative corporation, that is not a member of the association unless permitted by order of the Superintendent.

A retail association may accept a deposit from any person whether the person can legally enter into contracts or not and pay interest on the principal and the pay the principal and interest on demand to the depositor.

A retail association must not accept deposits in Canada unless it is a member of CDIC.

Business Powers

An association has the capacity of a natural person and the rights, powers and privileges of a natural person.

An association may only engage in the business of providing

- financial services to members of the association, entities in which an association has a substantial investment, another association, a cooperative credit society, a cooperative corporation or an entity controlled by one of the former; and
- administrative, educational, promotional, technical, research and consultative services and related goods to any cooperative credit society or any person intending to organize or operate such a society, in support of the financial services provided or to be provide by the society.

With the approval of the Minister, and subject to any order of the Superintendent, an association may also provide financial services to other entities and providing clearing, settlement and payment services to members of the Canadian Payments Association.

- hold, manage and otherwise deal with real property;
- act as custodian of property on behalf of members and other entities that it is permitted to provide services;
- make loans to officers and employees of the association;
- provide management, investment, administrative, advisory, educational, promotional, technical, research and consultative services to entities that it is permitted to provide services;
- provide specified information processing services outside of Canada, or in Canada with the prior written approval of the Minister, engage in:
  - collecting, manipulating and transmitting
    - information that is primarily financial or economic in nature
    - information that relates to the business of a permitted entity;
    - any other information that the Minister may by order specify
  - providing advisory or other services in the design, development or implementation of information management systems ; (iii) designing, developing or marketing computer software, and
  - designing, developing, manufacturing or selling, as an ancillary activity, computer equipment integral to the provision of information services related to the business of financial institutions or to the provision of financial services;
- with the prior written approval of the Minister, develop, design, hold, manage, manufacture and sell or otherwise deal with data transmission systems, information sites, communication devices or information platforms or portals to provide information that this primarily financial or economic in nature and that relates to the business of the permitted entity;
- if it is a retail association, act as a financial agent, provide investment counselling services and portfolio management services, issue payment, credit or charge cards and in cooperation with others, including financial institutions operate a payment, credit or charge card plan and promote merchandise and services to holders of payment, credit or charge cards issued by the association;
- engage in the sale of tickets, including lottery tickets, on a non-profit

- act as a receiver, liquidator or sequestrator.

A retail association may also engage, under prescribed terms and conditions if any, in specialized business management and advisory services.

Restrictions on Business Powers

Subject to the Act, an association is prohibited from carrying on any business other than such business generally appertaining to the business of providing financial services.

The legislation imposes business restrictions, including:

- that the Minister may impose terms and conditions on the provision of financial services provided by a retail association;
- that an association must not make guarantees unless the guarantee is for a fixed sum and the person for whom the association has entered into the guarantee has a unqualified obligation to reimburse the association for the full amount;
- except as provided under the legislation, that an association may not deal in good or engage in any trade or business;
- that an association must not undertake the business of insurance expect as permitted under the legislation and must not act, in Canada, as an agent for any person in the business of insurance or lease or provide space in its offices in Canada to any person engaged in the placing of insurance.

Business Outside Province

An association has the capacity to carry on business throughout Canada, as permitted by the laws of that jurisdiction.

Branching Restrictions

None specified

Borrowing Capacity

An association must not issue subordinated debt unless the debt is fully paid for in money, or with the approval of the Superintendent, in property.

Subordinated debt issued by an association is deemed not to be a deposit.

Licensing/Authorization to Engage in Business

Licensing Requirements

An association must not engage in business until it is approved to commence operations by the Superintendent.

The association has one year to organize and apply to the Superintendent for approval to commence business; an association ceases to exist if it does not meet this time limit.

Licensing Approval

The Superintendent will not make an order approving an association to commence business until the Superintendent is satisfied that:

- the required first meeting of members has been held,
- the association has paid up capital of at least five million dollars or such greater amount as the Minister may specify,
- the incorporation and organization expenses of the association are reasonable, and
- other relevant requirements of the legislation have been met.

Capital & Liquidity

Approach to Capital Adequacy

Minimum paid up capital of $10 million or such other amount the Minister may determine, is required as a condition of the Superintendent granting approval for the association to commence business.

Capital Requirements

An association must at all times, in relation to its operations, maintain adequate capital and must comply with any regulations in relation to what constitutes adequate capital. The Superintendent may make guidelines respecting capital adequacy. Despite compliance with any regulations or guidelines, the Superintendent may by order direct that a company increase its capital.

Restrictions on Capital

None

Liquidity Requirements

Loans to support requirements for liquid funds may be made to an association by the CDIC. Such loans are made for six months terms subject to renewal. The government may on terms and conditions established by the Governor In Council, make advances from the CRF to the CDIC to support liquidity loans made to associations. The aggregate limit on advances from the CRF is $200 million

Investment & Lending

Approach to Investment and Lending

The legislation establishes a prudent portfolio approach to investment and lending. The directors of an association are required to establish and a company is required to adhere to investment and lending policies, standards and procedures that a reasonable person would apply in respect of a portfolio of investments and loans to avoid undue risk of loss and obtain a reasonable return.

Investment and Lending Limits and Restrictions

The prudent portfolio approach is subject to certain limits and restrictions:

- an association with I$25 million or less of regulatory capital must not directly or through a prescribed subsidiary make or acquire a commercial loan if the aggregate value of all commercial loans would exceed 5 percent of the total assets of the association;
- an association $25 million or less of regulatory capital may directly or through a prescribed subsidiary make or acquire a commercial loan if the aggregate value of all commercial loans held by the association and its prescribed subsidiaries exceeds 5 percent of the total assets of the association only with the prior approval of the Superintendent;
- an association must not directly or through a prescribed subsidiary purchase or acquire an interest in real property loans, if the aggregate value of all interests in real property of the association would exceed a 70 percent of regulatory capital of the association;
- an association must not directly or through a prescribed subsidiary purchase or acquire participating shares or ownership interests in an entity (other than permitted entities in which it has a substantial interest) if the aggregate value of the shares and ownership interests would exceed 70 percent of regulatory capital;

- an association must not directly or through a prescribed subsidiary purchase or acquire participating shares or ownership interests in any entity (other than a permitted entity in which it has a substantial interest) or interests in real property if the aggregate value of the shares, ownership interests and interests in real property would exceed 100 per cent of regulatory capital.
- unless approved by the Superintendent, an association and its subsidiaries must not acquire assets from a person or transfer assets to a person if the total value of the assets acquired from or transferred to that person in the 12 months immediately preceding the acquisition or transfer would exceed 10 percent of the total assets of the company.

An association may not make a mortgage loan in Canada on residential property in Canada if the amount of the loan would exceed 75 percent of the value of the property, except in specified circumstances where there is security or a guarantee.

Investment in Subsidiary/ Affiliates

In general, an association is not allowed to acquire control of, or to hold, acquire or increase a substantial investment in any entity, other than a permitted entity. term "substantial investment" is defined as an interest in more than 10 per cent of the voting rights attached to all of the outstanding voting shares of a body corporate or an interest in any shares of a body corporate that exceeds 25 per cent of the shareholders' equity of the body corporate.

The term "permitted entity" is defined in the Act as including financial institutions (for example, banks, federal or provincial insurance companies, federal or provincial trust or loan corporations, credit cooperative associations, securities dealers, foreign institutions) as well as other entities that engage in specified activities. (This latter category would include such entities as factoring entities, finance companies, investment holding companies, information service entities, financial agents, mutual fund entities, investment counseling entities, and portfolio management entities.) Acquisitions of substantial investments in permitted entities are subject to approval and control requirements and other restrictions.

The Act also permits an association to acquire control of, or to acquire or increase a substantial investment in non-permitted entities as temporary investments or pursuant to loan workouts or realizations of security. In each case, the association must divest itself of the investment within a specified period of time

Related Party Transactions

Approach to Related Party Transactions

The legislation defines related parties and then establishes a general prohibition against entering into transactions with related parties, subject to certain permitted transactions.

Related parties are defined broadly and include a person who has a significant interest in a class of shares of the association; a director or senior officer; a spouse, common law partner or child over 18 years of age, of a either a person with a significant interest or a director or senior officer; an entity controlled by either a person with a significant interest or a director or officer; an entity in which a person who controls the association has a substantial investment; an entity in which the spouse, common law partner or child over 18 years of age, who controls the association has a substantial investment; or is a person designated by Superintendent as a related party.

Related parties of retail associations include: a member of the association or of an association that controls or has a significant interest in the association; a director or senior officer of the association or body corporate that controls the association; a spouse, common law partner, or child over 18 years of age of one of the former; an entity that is controlled by one of the former and a person designated or deemed to be a related party.

Directors and officers are required to disclose specified interests in a material contract or proposed material contracts with the association. Directors with a conflict of interest must not be present at any meeting where the contract is under consideration.

Allowable Transactions

An association may enter into the following related party transactions:

- where the value of the transaction is nominal or immaterial to the association when measured against criteria established by the conduct review committee and approved by the Superintendent;
- in the case of a retail association, the provision of services other than loans or guarantees normally provide to the public by the association in the ordinary course of business;
- loans or guarantees fully secured by securities of or guaranteed by the Government of Canada or government of a province or security of a mortgage of the principal residence of that related party;
- deposits by the association with a financial institution that is a direct clearer or member of a clearing group under the Canadian Payments Association and the deposit is made for clearing purposes;
- borrowing of money from, taking deposits from, or issuing of debt obligations to a related party by the association;
- purchase or acquisition of securities guaranteed by the Government of Canada or government of a province and the purchase or acquisition of goods for use in the ordinary course of business;
- purchase or acquisition of assets fully secured by securities of the Government of Canada or the government of a province;
- sale of assets of association to a related party where the consideration for the assets is fully paid in money and there is an active market for those assets;
- lease of assets by the association from a related party for use in ordinary course of business;
- written contract for the purchase of services used in the ordinary course of business;
- provision of services (other than loans or guarantees) normally offered to the public by the association in the ordinary course of business;
- written contract providing for the networking of services and referrals;
- written contract for pension or benefit plans and their administration as incidental to the directorships or employment of officers or employees of the association; and

- provision of management, advisory, accounting, information processing or other services in relation to the business of a related party.

All of these permitted related party transactions must be entered into on market terms and conditions except for:

- loans (other than margin loans) to full-time senior officers not exceeding the greater of twice the annual salary and $100,000 that may be made on terms and conditions more favourable than market terms and conditions, if the terms and conditions have been approved by the Conduct Review Committee;
- financial services, other than loans and guarantees to senior officers, that may be made on preferred terms and conditions provided those financial services are offered to employees of the association on those favourable terms and condition and the Conduct Review Committee has approved the practice of making these financial services available on those favourable terms and conditions to senior officers.

Board approval is required (approval of two thirds of directors at meeting) to make certain permitted transactions with related parties that would exceed in the aggregate two percent of the regulatory capital of the association. An association is restricted from entering into permitted transactions with directors and senior officers if the aggregate amount or value of the transactions would exceed 50 percent of the regulatory capital of the association.

Reporting and Audit

Required Reports

Annually, an association must prepare and place before its members a comparative financial statement, including the report of the auditor, and any other required information.

Scope of Financial Statements

An association must include in its annual financial statements a list of subsidiaries of the association including their names and head office addresses, the book value of shares of the subsidiary beneficially owned by the association and the percentage of voting rights attached to those shares.

An association must take all steps necessary to ensure that its auditor is appointed auditor of its subsidiaries.

An association must keep at its head office a copy of the current financial statements of each subsidiary of the association.

Powers and Duties of Auditors

The auditor is responsible for making an examination and reporting on the annual statement and other financial statements under the Act that must be placed before members.

The auditor has the right to request information from present and former directors, officers and employees and they must permit access to records and provide information to the auditor.

The auditor is entitled to receive notice of every meeting of the audit committee and conduct review committee and to attend and be heard. A member of the audit committee may request the auditor attend every meeting of the audit committee. The auditor may cal a meeting of the audit committee.

The auditor is required to make a report to chief executive officer and chief financial officer of any transactions that have come to the auditor's attention that may affect the well-being of the association. The report must be submitted to the CEO, the CFO and the actuary and presented and consider by the board at the first meeting after the receipt of the report.

A director of officer must notify the audit committee and the auditor of any material misstatement or error in the financial statement that they become aware of and the auditor must notify the directors if he or she becomes aware of a material misstatement in the financial statements of the association. The directors are required to prepare and distribute a revised annual financial statement in these circumstances.

Audit Committees

Composition

The audit committee is composed of at least three directors; none of whom may be an officer involved in the day-to-day operations of the association or employee of the association or subsidiary of the association.

Powers and Duties

The audit committee is responsible for

- reviewing he annual statement before it is approved by directors;
- meeting with the auditor to discuss statements and returns;
- reviewing such returns of the association as may be specified by Superintendent;
- requiring the management of the association to implement and maintain appropriate internal control procedures; reviewing, evaluating and approving such procedures and meeting with chief internal auditor and management to discuss effectiveness of internal control procedures;
- reviewing investments and transactions that could adversely affect the well-being of the association that the auditor or any officer of the association may bring to the attention of the committee.

Removal/ Resignation of Auditor

The members of a association may by ordinary resolution at a special general meeting revoke the appointment of an auditor. The Superintendent may at any time revoke the appointment of an auditor.

An auditor who resigns or receives notice of a meeting of members called for the purpose of removing the auditor or appointing another person as auditor shall submit to the Superintendent and the association a written statement giving the reasons for his or her resignation or why he or she opposes the proposed action.

Other Provisions

The Superintendent may require that the auditor report to the Superintendent on the extent of the auditor's procedures in the examination of the annual statement and may require that the auditor enlarge on or extend the scope of his or her examination or direct that a particular procedure be performed in a particular case.

The Superintendent may direct that a special audit of an association be made and may appoint an accountant or firm of accountants to undertake this special audit; the expense of such an audit are borne by the association.

Regulatory Duties & Powers

Role of Elected

The Minister is responsible for issuing letters patent to incorporate an association, approving significant changes and issuing letters patent to

Officials

liquidate and dissolve an association. There is specific provision in the Act allowing the Minister to delegate any of his duties to the Minister of State appointed to assist the Minister.

The Superintendent is responsible for the day-to-day supervision and regulation of associations and for determining whether or not they are in sound financial condition and in compliance with the Act. .

Regulatory Framework

Regulatory Organization

The Office of the Superintendent of Financial Institutions is responsible for the regulation of federal financial institutions, including credit associations.

The Minister of Finance is responsible for this Office

Inspection/ Examination

An association must provide the Superintendent with such information, at such times and in such forms as the Superintendent may require.

Annually, an association must prepare a return on the condition and affairs of the association, showing its assets, liabilities, and its income and expenditures for the past fiscal year. The annual return must be accompanied by a report of the association's auditor indicating whether the return accurately reflects the financial condition of the association.

The Superintendent, may from time to time, but at least annually, make an examination of each association to determine whether the association is complying with the Act and that the association is in sound financial condition. After each examination the Superintendent must report to the Minister.

Regulatory Powers

The range of regulatory powers include:

- ability of Minister or Superintendent, in granting any approval or making any order, to impose terms and conditions or to require undertakings;
- "prudential agreements" that the Superintendent may enter into with an association for the purpose of implementing a measure to improve the association's safety and soundness;
- directions of compliance made by the Superintendent to an association or person to cease or refrain from committing an act that is unsafe or unsound, or from pursuing a course of conduct that is unsafe or unsound and to perform such acts as are in the opinion of the Superintendent necessary to remedy the situation;
- application to court by the Minister or the Superintendent for an order to comply with a term or condition relating to an approval or to comply with an undertaking;
- application to court by the Superintendent for an order to comply with a prudential agreement or a direction of compliance;
- where an association is subject to conditions or limitations on its operations, a Superintendent's direction of compliance or an order by the Superintendent to increase its capital or liquidity, the Superintendent may disqualify a person from being elected or appointed as director or from being appointed as a senior officer or remove a person from the office of director on the basis that the person's competence, business record, experience, conduct or character makes that person unsuitable to hold that position;

- removal by the Superintendent of a person from office as a director or senior officer of a company if the Superintendent is of the opinion that the person is not suitable to hold that office on the basis of the competence , business record, experience, conduct or character of the person or because the person has contravened or has contributed to the contravention of the Act or regulations or specified regulatory measures;
- power of the Superintendent to take control of the assets of an association or to take control of an association where the association has failed or will be unable to pay its liabilities, a practice or state of affairs exists that may be materially prejudicial to the interest of creditors, the assets are not sufficient to give adequate protection to creditors, the assets are unsatisfactorily accounted for, the regulatory capital has reached a level or is eroding in a manner that may be detrimental to its creditors, the association has failed to comply with an order of the Superintendent to increase its capital, in the case of a retail association, the association's deposit insurance has been terminated by CDIC, or any other state of affairs exists that may be materially prejudicial to the interest of the depositors, creditors or assets under;
- power of the Superintendent, where control was taken of a company, to request the Attorney General to apply for a winding up order under the *Winding Up and Restructuring Act.*

As well, the Minister has the power to direct that a person not exercise the voting rights attached to their shares of an association, if that person has contravened the provision limiting equity ownership in an association.

Offences and Penalties

Types of Offenses

Any person who, without reasonable cause, contravenes the Act or regulations is guilty of an offence. A director, officer or auditor who without reasonable cause fails to provide information related to the condition of affairs of an association is guilty of an offence.

Admini Penalties

There is an administrative monetary penalty regime set out in sections 24 to 35 of the Office of the Superintendent of Financial Institutions Act.

Criminal Penalties

Any person found guilty of an offence is

- in the case of a natural person, liable on summary conviction to a fine of not more than $100,000 or to imprisonment for a term of not more than 12 months or to both or on conviction on indictment to a fine of not more than $500,000 or to imprisonment for a term of not more than five years or to both;
- in the case of an entity liable on summary conviction, to a fine of not more than $500,000 or on conviction on indictment, to a fine of not more than $5 million.

If the court is satisfied that a person convicted acquired monetary benefits, it may order the convicted person to pay an additional fine in an amount equal to these monetary benefits.

Recourse

Right to Hearing

Where the Superintendent intends to disqualify a person from being appointed or elected as a director or appointed as a senior officer, or to remove a director or senior officer from office, the Superintendent must give

15 days notice to that person to enable the person to make representations to the Superintendent.

Where the Superintendent intends to take control of the assets of an association for more than 16 days or to take control of an association, the Superintendent must give notice to the association of the proposed action and provide the association with an opportunity to make written representations within the time specified in the notice, not exceeding 10 days of receipt of the notice

Appeals Structure and Process

A director or senior officer removed from office by the Superintendent may within 30 days after receipt of notice of the removal order appeal the matter to the Federal Court

Where the Minister orders that a person may not exercise their voting rights, that person may appeal to the Federal Court and the court may dismiss the appeal, set aside the direction or decision, or send it back for re-determination.

Any decision or order of a court under the Act may be appealed to the court of appeal.

Stabilization/Supervision

Stabilization/ Supervisory Authority	N/A
Stabilization/ Supervisory Powers	N/A

JURISDICTION – ALBERTA

Regulatory Approach

Activity or Entity

Approach is to regulate the entity – credit unions – and the activities permitted by credit unions versus regulating the activity and prohibiting unlicensed entities from engaging in the regulated activities.

Nature of Approach

The Act is administered and enforced by the Minister. Certain powers, duties and functions are assigned directly to the Deposit Guarantee Corporation.

All credit unions are generally subject to the same level of regulation. However, "large credit unions" (assets equal to or greater than $2 million) are in some instances subject to differing regulatory requirements.

Corporate Framework

Incorporation

Incorporation Requirements

Twenty or more adult individuals, Canadian citizens or lawfully admitted to Canada for permanent residence and who are ordinarily resident in Alberta may become incorporated as a credit union by subscribing to articles of association.

The Minister must approve the incorporation if

- the Minister is satisfied that the incorporation document and requirements are met;
- the Credit Union Deposit Guarantee Corporation has notified the Minister that it is satisfied that the business plan is viable; and
- unless the Minister considers the incorporation contrary to the public interest.

Incorporation Restrictions

There is no requirement for a bond of association, but the articles must specifically state if there is a bond and what it is, or if there is no bond of association.

A credit union may not change from being one with a bond of association, to one without a bond of association unless the credit union obtains the permission of the Minister who must be satisfied that the credit union will meet all the requirements of a credit union without a bond of association and the change is not contrary to the public interest.

Significant Changes

Types of Changes

One or more credit unions may enter into a voluntary amalgamation and continue as one credit union.

A credit union that is going to continue to operate may enter into an arrangement with another credit union that is proposing to liquidate and dissolve to acquire the dissolving credit unions assets.

Requirements

Amalgamations

Related to Significant Changes

With respect to an amalgamation, the board of each amalgamating credit union must submit the amalgamation agreement to a general meeting for approval by special resolution. A credit union may be exempted from this requirement if its assets exceed 10 times the value of the other amalgamating credit union(s).

Two directors must make a statutory declaration that they have reasonable grounds to believe that the amalgamated credit union will not be insolvent and that no creditor will be prejudiced by the amalgamation. The Deposit Guarantee Corporation may exempt a credit union from the requirement to make a statutory declaration about the credit union's solvency if the Corporation is satisfied that the amalgamation would not be detrimental to affected persons, the amalgamation would not increase the likelihood of a claim against the Corporation and that an exemption is appropriate in the circumstances.

The Corporation must approve the amalgamation unless it has reasonable grounds for believing that the statements in the statutory declarations are not correct, the requirements in the legislation have not been complied with, or the amalgamation would be unsound from a business point of view.

Arrangements

Credit unions wishing to enter into an arrangement, must apply to the Corporation for a recommendation of the proposed arrangement from the Minister. The Corporation will recommend the proposed arrangement to the Minister if

- the arrangement is for all the assets and liabilities,
- the arrangement has been approved by the dissolving credit union through special resolution of its members and by the acquiring credit union through a resolution,
- in the opinion of the Corporation, the arrangement will not be contrary to the interests of the members or creditors of either credit union; and
- all required documentation is obtained.

Dissolution

Dissolution Requirements

Voluntary dissolution

A credit union may be special resolution, propose the voluntary liquidation and dissolution of the credit union and appoint a liquidator. The proposed liquidation requires the approval of the Minister. The Minister will not approve the proposed dissolution unless he has received the required documentation, including a copy of the special resolution and the Deposit Guarantee Corporation has recommended the approval on the basis that the credit union will prior to dissolution be able to discharge all its obligations and the dissolution is in the best interests of the credit union and its members.

Involuntary dissolution

The Minister may dissolve a credit union and appoint a liquidator for the purposes of an involuntary liquidation and dissolution if the Minister has reasonable cause to believe that the credit union is no longer carrying on business or has not carried on business for a period of at least six consecutive months, or after being permitted to commence business its membership has fallen below the required level.

The Minister may apply to the court for an order to dissolve a credit union, if the credit union has contravened the provisions respecting the disposal of assets; has procured a certificate under the Act by fraud or misrepresentation, is being used for an illegal purpose or has not been fulfilling the purposes of a credit union generally or as specified in the Act.

Member Requirements

The membership of a credit union must consist wholly or substantially of individuals.

A related party may be a member of a credit union provided they are not given any rights or privileges that are not held by other members.

A credit union may not be a member of another credit union. A subsidiary or affiliate may not be a member of a credit union.

Shares

Membership Shares

A person must hold the minimum number of common shares required by the credit union bylaws to become and remain a member of the credit union.

Other Types

A credit union must issue and maintain "common shares" and, a large credit union may issue one and only one class of "investment shares".

General Restrictions/ Prohibitions

"Common shares" may only be issued to members or a person where shares are held under a registered plan; have a par value of $1; the number that can be issued is unlimited, unless the bylaws of the credit union restrict the number of common shares that any one member may hold; are non-assessable and holders not liable to credit union or its creditors in respect of them; must be fully paid for before issued

A credit union must pass a special resolution to issue investment shares. Investment shares have no par value, carry no voting rights, are non-assessable and holders are not liable to the credit union or its creditors in respect of them. A credit union may not issues investment shares unless it had a net income in the preceding fiscal year.

Corporate Governance

Board Committees

The board must by resolution appoint

- one or more credit committees; and
- either an audit committee and a finance committee or an audit and finance committee. (credit unions that do not have an auditor are not required to have an audit or finance committee but the board is required as a whole to perform the functions and duties of the audit and finance committee).

The credit committee must consist of at least three members.

The finance committee, audit committee or finance and audit committee must consist exclusively of members and include at least three directors.

The board may form an executive committee composed of not less than three members appointed by the directors.

Standard of Care for Directors and

A director or officer must act honestly and in good faith and with a view to the best interests of the credit union as a whole; exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances; and comply with the articles and bylaws.

Officers

In determining whether a particular transaction or course of action is in the best interests of the credit union, a director must have due regard to the interests of all customers who have deposits with it.

The directors of the credit union are responsible for the general management of the business and the affairs of the credit union.

Directors Qualifications

Three-quarters of directors must at all times be ordinarily resident in Alberta.

A director of a credit union must be

- an individual
- an adult
- a member or a designated representative (e.g., of a corporate member)
- a Canadian citizen or an individual who has been lawfully admitted to Canada for permanent residence.

An individual is not qualified to be a director if the individual:

- is bankrupt;
- has been employed by a credit union, the Deposit Guarantee Corporation or a central credit union in the last three years;
- is a professional advisor to the credit union
- is a director of another credit union or the Corporation;
- is employed in the Alberta public service by a Provincial agency as defined under the *Financial Administration Act*
- in the last five years, has been convicted of an indictable offence of a kind that is related to the qualifications and functions of a corporate director or an offence under the *Credit Union Act*
- has a loan from the credit union that is in arrears;
- is a dependent adult under the *Dependent Adults Act*, is a formal patient under the *Mental Health Act*; or has been found to be of unsound mind by a court elsewhere than in Alberta;
- is disqualified under the credit union's specific bylaws.

An individual is not qualified to remain a director if the person fails, without good cause to attend the minimum number of board meetings required under the credit unions bylaws.

Director's Training

No requirements

Resignation/ Removal of Directors

Removal of directors is one of the responsibilities of the board as a whole (by Principal Regulation). There are no provisions allowing for, or requiring, directors to state reasons for resignation.

Licensing/Authorization to Engage in Business

Licensing Requirements

A credit union shall not commence business until the Minister has approved the commencement of business by the credit union.

Licensing Approval

The Minister shall not approve the commencement of business unless

- The credit union has submitted to the Minister any changes to its business plan and the Credit Union Deposit Guarantee Corporation has notified the Minister that the Corporation is satisfied that the changes do not affect the credit unions viability.
- The Minister is satisfied that
  - the credit union has 50 members, if it has a bond of association, and 250 members if it has no bond
  - the members have collectively subscribed and paid for common shares 250,000 shares in the case of a credit union with no bond of association and 10,000 common shares in the case of a credit union with a bond of association
  - the members have collectively deposited $750,000 in the case of a credit union with no bond of association and $30,000 in the case of a credit union with a bond of association, and committed to maintaining the deposits in the credit union for six months
  - the credit union has demonstrated evidence of its capacity for effective management and direction of its business
  - the certificate of incorporation has not been secured by fraud or misrepresentation
  - the credit union will not be used for an illegal purpose
  - the credit union will fulfill the purposes and mode of operation required of a credit union

Operations

Deposit Taking

A credit union may only accept deposits from members and other specified parties.

The Deposit Guarantee Corporation guarantees the repayment of all deposits with credit unions.

Business Powers & Restrictions

The Act sets out the general purposes of a credit union which are to provide on a co-operative basis financial services wholly or primarily for its members, and its principal purposes are to receive deposits from and make loans to its members.

A credit union has the capacity and, subject to the legislation, the rights, powers and privileges of an individual.

A credit union may carry on business consistent with the fulfillment of its purposes as a credit union.

A credit union may act as a trustee for a trust in respect of prescribed classes of transactions.

A credit union may also carry on any prescribed businesses, including:

- acting as a custodian of property;
- acting as a financial leasing corporation;

- providing tax preparation services provided those individuals who undertake this for the credit union have demonstrated competence and have participated in a course in that field;
- providing corporate registry services;
- with the approval of the Deposit Guarantee Corporation, acting as a financial leasing corporation, on condition that the credit union must not direct its customers or potential customers to a particular dealer and in accordance with a number of detailed prescribed conditions and rules relating to ensuring that the leases are financial in nature.

A credit union may have subsidiaries or affiliates that may carry on any business the credit union is allowed to engage in, the business of a trust and loan corporation and a securities dealer.

However, a subsidiary may not engage in the business of accepting deposits and lending money unless it is a financial institution that is legally permitted to do so or prescribed as being entitled to do so.

A credit union may also have as subsidiaries or affiliates that carry on prescribed businesses, including the business of:

- a service corporation provided the subsidiary or affiliate does not hold shares issues by any other corporation;
- a financial leasing corporation, but only if it does not hold shares of any other corporation; not less than 80% of its assets are receivables under financial lease agreements; and it meets all the conditions that apply to credit unions engaging in financial leasing;
- an insurance company;
- a real property brokerage corporation or a real property management corporation;
- a factoring corporation
- a mutual fund distribution corporation, registered as a mutual find dealer under the *Securities Act*.
- an asset management corporation;
- an investment counselling corporation, registered as such under the *Securities Act*
- a portfolio management corporation, registered as such under the *Securities Act;*
- an information management corporation whose activities are limited to the collection, manipulation and transmission of information that is primarily financial or economic in nature or the sale of related software.

Restrictions on Business Powers

A credit union or its subsidiary or affiliate must not carry on any business unless the business is authorized under the legislation or is consistent with the legislation. A credit union shall not do anything prohibited by its articles or in contravention of its articles.

A credit union may not act as an underwriter within meaning of *Securities Act*.

A credit union may not act as an insurer, insurance agent or adjuster.

However, a credit union may hold a restricted agent's certificate of authority under the *Insurance Act* and is authorized to act as an insurance agent to the extent permitted by the certificate.

A credit union may not sell, lease or exchange all or substantially all of its assets other than in the ordinary course of its business unless the disposal is approved by a special resolution.

Business Outside Province

A credit union may carry on its business and conduct its affairs and exercise its powers in any jurisdiction outside Alberta to the extent that the laws of that jurisdiction permit.

Branching Restrictions

There are no restrictions on a credit unions branching, but a credit union must inform the Deposit Guarantee Corporation when it establishes a branch, relocates a branch or establishes an automated teller machine

Borrowing Capacity

A credit union may only borrow or continue to borrow money in accordance with a resolution of its board, except for borrowings from the Deposit Guarantee Corporation. The term of borrowing may not exceed two years unless approved by board resolution or borrowings from the Corporation.

Where the borrowings exceed 20% of the credit union's assets, unless the credit union has received prior approval of the Corporation, the Corporation must examine the financial position of the credit union, and unless the Corporation determines that the excess borrowings pose no threat to the credit union's financial stability, must place the credit union under supervision.

Capital & Liquidity

Approach to Capital Adequacy

A credit union is required to maintain a prescribed level of "adequate capital". Regulations outline a combined approach to capital adequacy requiring the greater of a percentage of total assets or a percentage of risk weighted assets.

Capital Requirements

A credit union maintains adequate capital where total capital equals or exceeds the greater of:

- 4% of its total assets, less any S C Financial Ltd. debentures owned by the credit union;
- 8% of its risk weighted assets determined in accordance with the regulations.

Restrictions on Capital

A credit union must not acquire its common shares if it has reasonable grounds to believe that the credit union would become insolvent as a result of the redemption; if the redemption would result in the number of issued common shares falling below 90%; or if the capital requirements are not being met or the redemption would result in them not being met. A credit union must not acquire its investment shares if it has reasonable grounds to believe that it would become insolvent as a result of the redemption, or if the capital requirements are not being met or the redemption would result in them not being met.

These restrictions do not apply if the redemption is due to the death of the member, or where a member is expelled or moves from the area in which the credit union as specified under its bylaws does business.

A credit union is also prohibited from issuing retained earnings and patronage dividends and other dividends if there are reasonable grounds to believe that the credit union would become insolvent as a result of the payment or would not meet its capital requirements.

Liquidity Requirements

A credit union must maintain liquidity equal to the amount in assets and in such form as is determined by the Central as being prudent and 6% of a prescribed amount in any combination of prescribed liquid assets. If the credit union falls below this limit, the amount of the shortfall is an automatic borrowing by the credit union from the Central.

Investment & Lending

Approach to Investment and Lending

A credit union must adhere to prudent investment and lending standards in making investment and loan decisions and in managing its investment and loan portfolio (investment and lending rules broken down into separate categories).

The board must, on the recommendation of its finance committee establish written investment procedures to ensure prudent standards are applied. The Deposit Insurance Corporation is responsible for approving these standards.

The board must establish written procedures to ensure prudent lending standards are applied and must review its lending standards annually.

Investment and Lending Limits and Restrictions

Investment Limits and Restrictions

A credit union or its subsidiary must not acquire land unless it is for their own purposes and the total book value of all land does not exceed 5% of credit union's assets calculated on a consolidated basis. A credit union or its subsidiaries must lease land unless it is for their own purposes.

A credit union is prohibited from acquiring securities of another credit union if the value of the securities and the amounts of loans made with other credit unions by the investor credit union exceeds 2%.

A credit union is prohibited from making an investment in a derivative securities unless it is to hedge an asset or liability.

Loan Limits and Restrictions

The board must establish by resolution the aggregate maximum amount of money that may be loaned to a specific borrower and to persons connected with that borrower. A credit union must not make a loan if

- in the case of a credit union with assets of less than $10 million, the loan would exceed 5% or the credit union's assets or $100,000 whichever is greater;
- in the case of a credit union with assets of more than $10 million but not more than $200 million, the loan would exceed 2% of assets or $500,000 whichever is greater;
- in the case of a credit union with assets of more than $200 million, the loan would exceed 2% of assets if it meets its adequate capital requirements and 1% of assets and $4 million if it does not meet its capital requirements.

A credit union must not make a loan to a person if that loan combined with other loans to that person and persons connected with that person would exceed an amount established by the Deposit Guarantee Corporation for that class of loan.

Investment in Subsidiary/ Affiliates

Unless the credit union has the prior approval of the Deposit Guarantee Corporation, the limit on investment in a single subsidiary is 10% of the credit union's total capital and aggregate investment in all subsidiaries is 20%.

The Minister may direct that a credit union divest itself of any share investment in a subsidiary if the subsidiary is carrying on unauthorized business, unsound business practices, business outside of Alberta but not in Alberta, or has exceeded the investment limits on subsidiaries.

A credit union may invest in shares of other corporations up to 10% of that corporation's total voting shares; or up to 10% of the credit union's total capital in one corporation and 20% of the credit union's total capital in all corporations.

Related Party Transactions

Approach to Related Party Transactions

General ban approach with exceptions -

- a credit union and its subsidiaries, are not permitted to directly or indirectly engage in a transaction with a related party; and
- a related party is not permitted to directly or indirectly engage in a transaction with a credit union,
- except to the extent, if any, permitted under the legislation.

There is also a one year time limit, prohibiting the credit union from entering into a transaction with a person who was a related party of that credit union during the past 12 months unless the transaction is authorized by the board of the credit union and is at fair market rate.

Where a professional advisor becomes aware of a contravention of a related party provision the advisor must make the auditor and board of the credit union aware of the contravention. The auditor must then report to the board and the Minister about the contravention.

Allowable Transactions

A credit union may dispose of property to a related party that is a financial institution at fair market rate provided the consideration is fully paid in money. The credit union needs the approval of the Deposit Guarantee Corporation to dispose of assets under this provision having an aggregate value in excess of 10% of the credit union's assets. A credit union may also with the approval of its board and the Corporation enter into a transaction with a related party for the purpose of acquisition or disposal of assets as part of restructuring of a credit union.

Provided that the board of the credit union has authorized the transaction, a credit union or its subsidiary may enter into the following transactions with a related party:

- a contract for management services with a related party if it is reasonable that credit union or subsidiary obtain these services and that consideration is at fair market value;
- a written lease of personal property at fair market rate and for a maximum term of five years;

- a written contract for pension and benefit plans and for employees and officers of the credit union or subsidiaries;
- a contract of employment with a director or officer;
- a written contract for purchase of other goods and services required by the credit union or subsidiaries in carrying out their affairs, provided there is appropriate documentation and the contract does not exceed five years.

The credit union or its subsidiaries do not need board authorization, unless the bylaws require it, to enter into:

- a contract of employment with staff who are not directors, officers;
- a transaction for sale of goods or services that are not otherwise provided for under a related party provision;
- a prescribed transaction that is permitted if there is board authorization.

A credit union may apply to the Deposit Guarantee Corporation for permission to engage in a prohibited related party transaction. The Corporation may allow the transaction if it is satisfied it is beneficial to the credit union or its subsidiaries and will not prejudice the interests of the credit unions members.

Related parties are prohibited from entering into a transaction where the related party knows, or ought reasonably to know, that in entering into the transaction he would make use of information confidential to the credit union or subsidiary in order to obtain a benefit or gain an advantage. Former related parties must disclose in writing to the credit union the nature of the related party's interest in a transaction or proposed transaction.

A director or officer of a credit union is required to make disclosure of related party and similar transactions to the credit union and the board of the credit union, and may not influence or vote on the transaction.

A related party who knows or has reason to believe that the party is a related party of the credit union and is about to enter into a transaction with the credit union must disclose their interest to the credit union.

Reporting and Audit

Required Reports

Each credit union with assets amounting to $5 million or more must have an auditor and must prepare annual financial statements for the previous fiscal year, and include an auditor's report on the statements.

A credit union with assets amounting to less than $5 million must have an auditor unless it has passed an ordinary resolution specifying that it is not to have an auditor. Credit unions without an auditor must prepare unaudited financial statements for the previous fiscal year.

Large credit unions (assets over $2 million), must also have an internal operations report prepared by the auditor or someone approved by the Deposit Guarantee Corporation. The internal operations report must report on the adequacy of measures for internal control adopted by the credit union, an corrective measures taken by the credit union in response to deficiencies, any noted instances of contraventions of the legislation. The internal operations report is presented to the board before being sent to the

Minister.

The credit union must submit an annual return and periodic reports to the Minister as well as its financial statements.

Scope of Financial Statements

The financial statements must be prepared on both a consolidated basis (consolidating the financial statements of the credit union with its subsidiaries) and a separate basis (requiring separate financial statements for just the credit union).

The auditor of the credit union is also the auditor of its subsidiaries unless the Minister approves otherwise.

Powers and Duties of Auditors

The auditor of a credit union is responsible for conducting an audit and examination of the credit union's and the credit union's subsidiaries financial statements and making a report on them.

The auditor and internal auditor are entitled to receive notice of and attend the general meetings and meetings of the finance, audit or finance and audit committees.

The auditor may call a meeting of the audit committee.

The auditor is entitled to request and receive any information and explanations that are in the auditor's opinion required to allow the auditor to make his or her report.

The auditor may, and must when directed, provide information obtained in the audit to the Minister.

Audit Committees

Composition

A credit union must have a finance, audit, or finance and audit committee established by board resolution. The finance committee, audit committee or finance and audit committee must consist exclusively of members and include at least three directors.

Powers and Duties

The finance, audit, or finance and audit committee must meet at least once each quarter of the year and is responsible for:

- recommending to the board the annual budget for following year;
- considering and reporting to board on the credit union's business performance on a quarterly basis;
- making recommendations to the board on the investment procedures and prudent lending standards;
- recommending financial policies related to investment and lending for board approval;
- performing other task assigned by board resolution or as prescribed under the legislation.

In addition, the audit committee is responsible for

- reviewing the annual audited financial statements and making recommendations to the board;
- reviewing and making recommendations to the board on the appointment and remuneration of the auditor;

- reviewing with the auditor the scope of the audit, before the audit is started;
- reviewing letters, recommendation and reports prepared by auditor or internal auditor and making recommendations to the board about them;
- reviewing all financial reports;
- recommending to the board, arrangements to safeguard the credit unions assets, to ensure the timeliness, accuracy and reliability of accounting data, to promote operational efficiency and effectiveness;
- reporting to the board on any significant changes in accounting principles and practices; and
- ensuring that the recommendations of the auditor receive the board's attention.

Removal/ Resignation of Auditor

A credit union must give immediate notice to the Minister of the removal, resignation or other termination of its auditor with the reasons for it.

An auditor who has resigned, not been reappointed or removed may submit a report to the credit union about any matter the auditor considers the board should know, including the reasons for the auditor's resignation or why the auditor should not be removed. On the request of the auditor the credit union will arrange to have this information presented at next annual general meeting or board meeting, as the case may be, and provide a copy to the Minister and to each director.

The Deposit Guarantee Corporation, with the approval of the Minister, may remove an auditor of a credit union that is under its supervision or administration and appoint another person as auditor.

Other Provisions

The Minister or the Deposit Guarantee Corporation may, where it considers that an auditor is needed to safeguard the interests of members, appoint an auditor for a credit union that does not have an auditor.

Regulatory Duties and Powers

Role of Elected Officials

Minister is responsible for administration of the Act and ultimately accountable for approvals and regulatory decisions under the Act.

Regulatory Framework

Regulatory Organization

The day to day administration of the Act is undertaken by **the Deposit Guarantee Corporation in relation to credit unions** as delegated by the Minister, and the Department of Finance in relation to Credit Union Central Alberta. The Credit Union Deposit Guarantee Corporation of Alberta is an agency in the Ministry of Finance and is accountable to the Minister of Finance, and has both regulatory and deposit guarantee functions.

Inspection/ Examination

The Minister may examine any aspect of the business or affairs of a credit union or subsidiary to determine

- the credit union or subsidiary's condition and ability to meet its obligations;
- whether the credit union or subsidiary is following sound business practices;

- the credit union or subsidiary's management procedures;
- the standards of the credit union or subsidiary's management;
- whether the credit union or subsidiary is contravening the legislation.

The Minister may also appoint a person to undertake a special examination where the Minister consider an investigation is necessary in order to safeguard the interests of the credit union's members, customers or creditors or the assets of the credit union or subsidiary.

The Deposit Guarantee Corporation may conduct a financial review of a credit union or its subsidiaries to determine their solvency and assess their financial position, or business and financial practices.

Regulatory Powers

Regulatory powers include:

- ordering a person to provide information or documentation necessary for inquiring or facilitating an inquiry of the Corporation into a credit union or subsidiary's condition and ability to meet its obligations, conduct of its business, or a complaint made by a member, customer or creditor;
- applying to the court for a court order supporting the Minister's demand for information;
- issuing a cease and desist order, where the Minister considers that a credit union or Central or its subsidiary is doing or about to do something in contravention of the Act, inconsistent with the mode of operation of a credit union, constitutes a practice that might adversely affect members, customers or creditors.

The Minister may apply to court for an injunction to restrain a credit union, a Central or any related party from contravening a bylaw or provision of the legislation. The Minister may also apply to court for an order setting aside a prohibited related party transaction.

Offences and Penalties

Types of Offenses

General offence provision – any person who contravenes and provision of the legislation is guilty of an offence.

In addition, no person carrying on business in Alberta may use the words "credit union" unless the person is a credit union or Central under the Act. A person must not destroy, alter, or conceal information, record untrue information or provide willfully provide information that is false or misleading to the Minister or the Deposit Guarantee Corporation.

Administrative Penalties

A credit union or Central may be liable to a civil penalty imposed by the Minister for failure to submit their annual returns, periodic reports and financial statements as required under the Act.

Criminal Penalties

A person convicted of an offence involving

- disclosure or use of confidential information by a related party or a director or officer is liable to a fine of $25,000 or an amount equal to three times the benefit gained whichever is higher
- a Central that undertakes restricted business is liable to a fine of $25,000 or an amount equal to three times the benefits gained whichever is higher;
- use of credit union's members list for other than a legitimate purpose or

failure of directors or officers to act honestly and in good faith is liable to a fine of $25,000;

- not disclosing a prohibited related party transaction is liable to a fine of $15,000; and
- any other contravention of the legislation, in the case of an individual, a fine of not more than $5,000 and, in the case of any other person, a fine of not more than $25,000.

Recourse

Right to Hearing

Where the Minister or Corporation makes any decision or determination under the legislation, the Minister or Corporation will advise the party and allow the party a reasonable opportunity to make a representation to them about the matter. If the Minister or Corporation believes that the interests of the party could be adversely affected by a delay the Minister or Corporation may make the decision without allowing the party the opportunity to make a representation.

In the case of a credit union under supervision, where a supervisor takes an action the credit union has the right to make a representation to the Minister or Corporation respecting the proposed action. The party has four days to notify the Minister or Corporation of their plan to make a representation and the Minister or Corporation must give the party a reasonable opportunity to make the representation. The action is stayed until the party is heard. The Minister or Corporation may confirm, vary or rescind the action.

Appeals Structure and Process

A party aggrieved by specified significant decisions or actions under the legislation is entitled to have the decision reviewed by a review board appointed by the Minister. The review board must consist of one person designated as Chair by the Minister and not fewer than two or more than four persons who must not be directors of the Corporation, or employed in Alberta public service or by the Corporation.

The Minister must appoint the review board within 30 days of receiving the notice of objection from the party to the decision or action. The Minister must set a period not exceeding 90 days in which the review board will is to make the review and give its written decision. This period may be extended but only once and only by 45 days. The review board may confirm, rescind, or vary the decision that is the subject of the review.

A party may appeal a decision of the review board to court. A person may apply to the Minister for leave to appeal directly to the court and where granted the person is considered to have waived their right to a review.

Where a party is appealing a decision to the review board or the court as the case may be, the appeal does not operate as a stay of the decision. However, the review board or the court may grant a stay in respect of a decision. The Minister will not issue a certificate of dissolution if the decision to dissolve is under appeal.

Stabilization/Supervision

Stabilization/ Supervisory Authority

Where the Minister or the Deposit Guarantee Corporation considers that a credit union is in need of assistance and supervision, the Minister or Corporation may make an order placing the credit union under supervision and appointing the Corporation or other person at act as supervisor.

Where a credit union under supervision remains in need of assistance and has generally failed to cooperate with the supervision or problems have not been resolved, the Corporation with the approval of the Minister may place the credit union under administration and appoint itself of some other person as administrator. The Corporation may also make an order placing credit union under administration, with the approval of the Minister, if the Corporation believes this is necessary to ensure that the deposit guarantee is not invoked.

When the Minister or Corporation consider that the credit union is no longer in need of assistance they may revoke the order of supervision or administration.

Stabilization/ Supervisory Powers

A supervisor is responsible for supervising the business and affairs of the credit union and unless the supervisor is the Corporation, the supervisor must work under the direction of the Corporation.

JURISDICTION – ONTARIO

Regulatory Approach

Activity or Entity Approach is to regulate the entity – credit unions – and the activities permitted by credit unions versus regulating the activity and prohibiting unlicensed entities from engaging in the regulated activities.

Nature of Approach All credit unions are subject to the same general level of regulation.

Corporate Framework

Incorporation

Incorporation Requirements Twenty or more individuals may incorporate a credit union by signing articles of incorporation and applying to the Minister. An individual is disqualified from being an incorporator if that individual is under 18 years of age, of unsound mind, or has the status of a bankrupt.

The Minister must direct the Superintendent to inquire into the circumstances, sufficiency and regularity of the articles. The Minister shall not issue a certificate of incorporation unless:

- The plans for conduct and development of credit union are feasible and sound
- The credit union will be operated in accordance with cooperative principles
- The credit union will be operated in such a way that deposits will be safeguarded
- The credit union will be operated responsibly by individuals who are by virtue of their character, competence and experience are suited to operate a credit union
- The incorporation will serve the best interests of the cooperative financial system in Ontario.

Incorporation Restrictions There is no legislated requirement for a common or other bond of association at the time of incorporation, however the credit union must set out membership limits and requirements as part of it bylaws (see membership requirements).

The credit union must have include the words "credit union" or "caisse populiare" and otherwise comply with name requirements of the legislation or Superintendent.

Significant Changes

Types of Changes *Transfer of Assets* – a credit union can transfer all or substantially all of its assets. If the purchaser is a credit union, the purchaser may also assume the liabilities of the credit union.

Amalgamation – any two or more credit unions may amalgamate and continue as one credit union. The Deposit Insurance Corporation may apply to the Minister for an order that two credit unions amalgamate if the credit unions are under the administration of the deposit insurer or one of the credit union is and the other one consents.

Requirements Related to Significant Changes

An agreement to transfer assets must be pre-approved by the Superintendent before it is sent to the credit union members and shareholder to the required approvals by the special resolution.

An agreement to amalgamate is subject to the approval of the Superintendent and to the adoption of members by vote of two-thirds votes cast at a meeting of members and shareholders called by the amalgamating credit unions for the purpose of considering the amalgamation agreement. If the amalgamation is approved the Minister may in his discretion issue a certificate of amalgamation.

The Minister will issue an order to amalgamate on the application of the Deposit Insurance Corporation if the Corporation can demonstrate that the amalgamation is in the best interests of depositors and promotes the financial security and integrity of the amalgamated credit unions.

Dissolution

Dissolution with no assets – if authorized by a special resolution of its members a credit union with no assets and liabilities may apply to the Superintendent for an order dissolving the credit union and the Superintendent will issue the order it satisfied that the dissolution is appropriate.

Voluntary winding up – a credit union may apply to the Superintendent for an order to dissolve a credit union if approved by a special resolution of members and each class of shareholders which appoints a liquidator.

Winding up by court order – a credit union, member of a credit union, if the credit union is being voluntarily wound up, the Superintendent or a creditor having a claim of more than $200, or the Deposit Insurance Corporation may apply to the court for an order that the credit union be wound up; on granting the order the court may appoint one or more persons as liquidators.

Dissolution by order of Superintendent – after giving a credit union an opportunity to be heard, the Superintendent may order that a credit union be dissolved if the Superintendent is satisfied that the

- Incorporation of the credit union was obtained by fraud or mistake;
- It exists for an illegal purpose;
- The number of its members is below 20;
- It is not carrying on business or in not in operation;
- It has contravened the Act or regulations.

Membership

Membership in a credit union is governed by the credit unions bylaws. Bylaws must prescribe a number of membership shares that the person or entity must hold to be a member of the credit union. The bylaws must provide that membership is limited to persons who come within a bond of association. The bond of association may be among person who have a common occupation, reside or work within a community, municipality or neighborhood, or both. The credit union may accept members outside its common bond if approved by the board of directors and all such members does not exceed three percent of total members.

The Superintendent may approve an amendment to the bylaws changing the common bond of membership if satisfied that the credit union is meeting prudential investment and lending standards, capital and liquidity requirements and operating in a satisfactory manner.

Shares

Membership Shares

The articles must provide for a class of shares known as membership shares that a members holds as a condition of membership. Membership shares confer equal rights on holders including rights to receive dividends and receive the remaining property of the credit union on dissolution.

Other Types

A credit union may issue other shares other than membership shares as authorized by the articles. These shares do not confer the right to vote at meetings of the credit union generally and or the right to receive any of the remaining property of the credit union on dissolution.

General Restrictions/ Prohibitions

A credit union must not purchase or redeem its shares, or pay a dividend or patronage return, if there are reasonable grounds to believe that this will place the credit union in contravention of its requirement to maintain adequate capital.

Corporate Governance

Board Committees

Executive Committee – must have at least three members with a majority of members directors. The board may delegate any of its powers to the executive committee except:

- fill a vacancy among directors or audit committee;
- appointing or removing the CEO, treasurer, general manager or director of the credit union;
- appointing signing officers;
- issuing securities, except as authorized by the directors, or purchasing, redeeming or acquiring securities;
- declaring dividends or patronage returns;
- authorizing a commission on the sale of shares;
- approving financial statements;
- adopting, amending or repealing bylaws;
- authorizing purchase, sale or lease or other disposition of material assets;
- expelling a member.

Credit Committee – A credit union must have a credit committee, unless it has passed a bylaw providing that a person appointed as a loan officer is responsible for all the duties of the credit committee. The credit committee must have at least three members. An individual appointed to credit committee must meet the qualifications of directors. The credit committee is responsible for reviewing all loans to members and other duties imposed by legislation or bylaws.

Standard of Care for Directors and

Every director, officer, member of a committee shall exercise

Officers

- the powers and discharge the duties of his or her office honestly, in good faith and in the best interests of the credit union or an affiliate ;
- the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Every director, officer, member of a committee shall

- keep information confidential that he or she knows is confidential to the credit union;
- not enter into a transaction in which he or she makes use of information to obtain a personal benefit or advantage.

The directors are responsible for supervising and managing the affairs of the credit union.

The directors must establish investment and lending policies, standards and procedures, establish procedures to identify and resolve conflicts of interest and for restricting the use of confidential information and must establish a board committee to monitor the procedures.

Directors Qualifications

A credit union must have a minimum of five directors.

A director of a credit union must be

- an individual
- at least eighteen years of age
- a member
- a Canadian citizen or an individual who has been lawfully admitted to Canada for permanent residence.

An individual is not qualified to be a director if the individual:

- has had his or her membership terminated;
- is an undischarged bankrupt or who has been discharged as a bankrupt in the preceding five years, or is more than 90 days in arrears in payment of a debt to the credit union;
- an employee of the credit union or league in which the credit union is a member, or an employee's spouse, same-sex partner or child;
- an employee of the deposit insurer or stabilization authority for the credit union;
- is a professional advisor to the credit union;
- is a public servant employed in regulating credit unions;
- in the last five years, who has been convicted of an offence of a kind that is related to the qualifications and functions of a corporate director, involves theft or fraud punishable by a term in prison of five years or more, or an offence under the *Credit Union Act* or the *Securities Act*;
- whose membership is a professional association has been terminated for professional misconduct in the preceding five years;
- is someone who a court has found to be of unsound mind;
- has not completed a prescribed training program.

Director's Training

Every director, every member of a credit committee, every member of the audit committee must complete a prescribed training program (no training program has yet been prescribed).

Resignation/ Removal of Directors

If a director fails to attend three consecutive meetings without reasonable cause or fails to perform any duties allotted, the board may by resolution declare the director's position vacant.

A director may be removed from office by a resolution passed by two-thirds of the votes cast at a general meeting duly called for that purpose. At the meeting the director may make representations about the resolution for his or her removal and may be represented by legal counsel.

If the Superintendent has reason to believe that a director may not be fit as to character and competence to hold office as director, the Superintendent may request information from the credit union to and hold a hearing to determine the director's fitness. After the hearing, the Superintendent may declare the director's position vacant.

A director who learns of a meeting to remove him or her from office, learns that the a vacancy is to be filled following his or her resignation or removal, or whose term has or is about to expire, may give the credit union a written statement outlining why the director opposes the proposed action or resolution of members or directors. A copy of this statement must be provided to the Superintendent. A director who resigns is entitled to give the credit union a written statement of the reasons for resigning and if the Superintendent requests a copy of this statement the director must provide it. Where the director resigns because of a disagreement with the other directors or officers, the director must give a copy of the statement to the Superintendent and the credit union must let its membership know that the statement is available upon request.

Operations

Business Powers

The object of a credit union is to provide on a cooperative basis financial services primarily for its members.

A credit union has the power and capacity of a natural person and the rights, powers and privileges of a natural person.

A credit union may engage in the following businesses:

- Provide financial services to its members, depositors, subsidiaries and affiliates;
- Hold and deal with real property;
- Act as a custodian of property for its members, depositors, subsidiaries and affiliates;
- Make loans to officers and employees of the credit union;
- Promote merchandise or services to its members or the holder of any payment, credit or charge card issued by the credit union, its subsidiaries or affiliates;
- Engage in the sale of tickets, including lottery tickets, for non-profit purposes urban transit tickets and government lottery tickets.

Deposit Taking

A credit union may only accept deposits from its members, the deposit insurer, government and government agencies and other persons approved by the Superintendent.

The deposits of a credit union are insured by the Deposit Insurance Corporation of Ontario up to $100,000.

Restrictions on Business Powers

A credit union shall not engage in or carry on any business other than the businesses allowed under the legislation. A credit union shall not deal in goods or engage in any trade or business except as authorized by Act, except with the written approval of the Superintendent, it may deal in goods or engage in any trade or business that is reasonably ancillary to the provision of financial services.

A credit union shall not

- provide financial services that are prohibited under the regulations;
- be a general partner in a limited partnership or partner in any other partnership, unless approved by the Superintendent;
- guarantee the payment of money on behalf of another person unless it is a fixed sum and the person has an unqualified obligation to reimburse the credit union, or it is authorized by the Superintendent (the aggregate limit on all guarantees is 10%, unless the Superintendent approves otherwise)

A credit union may only engage in insurance business or act as an agent for insurance and undertake fiduciary activities as permitted under the regulations. The regulations provide that a credit union must not underwrite insurance or act as an agent for any person placing insurance. A credit union is also prohibited from providing space in any of its office to a person placing insurance. A credit union may only act a as a trustee with respect to deposits under a registered plan, trust funds established under the *Cemeteries Act*, loan proceeds or securities under loan participation agreements or syndication agreements and escrow agreements under the *Community Economic Development Act*.

Business Outside Province

A credit union may exercise its powers outside of Ontario to the extent permitted under the laws of that jurisdiction. A credit union may accept extraprovincial powers and rights.

Branching Restrictions

A credit union may establish branches subject to any conditions set out in its bylaws.

Borrowing Capacity

A credit union may only borrow if permitted under its bylaws and shall not borrow an amount exceeding 25% of its capital and deposits unless a bylaw of the credit union authorizes it to borrow up to 50% of its regulatory capital and deposits.

A credit union may not issue subordinated debt unless it is fully paid for in money, or with the approval of the Superintendent, in property.

A credit union may pledge for liquidity reasons.

Licensing/Authorization to Engage in Business

Licensing

No specific provisions or requirements for licensing or authorization prior to

Requirements engaging in business.

Licensing Approval N/A

Capital & Liquidity

Approach to Capital Adequacy

A credit union shall maintain adequate and appropriate forms of capital in relation to its operations. Pursuant to the regulations a credit union must maintain regulatory capital that equals at least 5% of its total assets and at least 8% of its risk weighted assets as defined by regulation.

Capital Requirements

The Superintendent may order a credit union to increase its capital, even if the credit union meets the regulations governing adequate capital if there are reasonable grounds to believe that the credit union is not complying with the Act, or the Superintendent considers it is necessary to protect interests of members, shareholders and depositors or to ensure the financial security and integrity of the credit union.

A credit union must on request of the Superintendent, send the Superintendent a report on its compliance with the capital adequacy requirements of the legislation.

Restrictions on Capital

A credit union must not redeem or purchase shares or pay a dividend or patronage return if there are reasonable grounds to believe that this will put the credit union in contravention of its capital adequacy requirements.

Liquidity Requirements

A credit union shall maintain adequate and appropriate forms of liquidity in relation to its operations. Pursuant to the regulations a credit union must maintain

- at least 1% of its deposits and borrowings in cash and deposits in Canada with a bank, loan or trust corporation, Province of Ontario Savings Office, or a league, and
- a total of 10% of its deposits in assets described above and treasury bills of other debt obligations issues by Canada or a province, an amount equal to its payroll deductions, bankers' acceptances or discounted notes, deposits and debt obligations, in a Central Credit Union of Canada, the Caisse Centrale Desjardins or a league ;or
- at least 8% of its deposits in assets described above if it has a line of credit in the amount of 2% with a financial institution, Central Credit Union of Canada, the Caisse Centrale Desjardins or is a member of a liquidity pool.

The Superintendent may order a credit union to provide additional liquidity in the required form and amounts even if the credit union meets the regulations governing liquidity if there are reasonable grounds to believe that the credit union is not complying with the Act, or the Superintendent considers it is necessary to protect interests of members, shareholders and depositors or to ensure the financial security and integrity of the credit union.

A credit union must on request of the Superintendent, send the Superintendent a report on its compliance with the liquidity requirements of the legislation.

Investment & Lending

Approach to Investment and Lending

A credit union must adhere to policies and procedures that a reasonably prudent person would apply in respect of a portfolio of investments and loans to avoid undue risk of loss and to obtain a reasonable return. A credit union must establish written investment and lending policies and procedures and the board must review these twice a year. The Superintendent may order that a credit union revise it investment and lending policies if they do not meet the requirements of the legislation or are otherwise deficient.

Investment and Lending Limits and Restrictions

A credit union may only make loans if it has lending license (types of licenses include: agricultural lending license, commercial lending, institutional lending, personal lending, residential mortgage lending, syndication, unincorporated association lending) and as permitted under that license. Lending limits on specific loans and aggregated lending limits for the various types of lending and loans to a person or entity (and connected persons) are specified in regulation, and vary depending on amount of regulatory capital held by the credit union.

The aggregate limit on all agricultural loans and commercial loans made by a credit union must not exceed 50% of a credit union's regulatory capital and deposits. The aggregate of all institutional loans by a credit union must not exceed 0.5% of a credit union's regulatory capital and deposits.

The total book value of all investments by a credit union and its subsidiaries in

- improved real estate in Canada must no exceed 10% of the credit union's regulatory capital and deposits
- shares and ownership interests, other than shares in its subsidiaries, must not exceed 5% of the credit union's regulatory capital and deposit

Investment in Subsidiary/ Affiliates

With the approval of the Superintendent, a credit union may establish or acquire prescribed subsidiaries. The Superintendent may impose conditions and terms and will not approve the investment if he or she believes that it is made primarily for the purpose of allowing the credit union to avoid the investment limits under the legislation. The Superintendent may revoke his or her approval of an investment in a subsidiary and the credit union must divest itself of the investment.

Prescribed subsidiaries are:

- A financial institution;
- A factoring corporation;
- A financial leasing corporation;
- An information services corporation;
- An investment counselling and portfolio management corporation;
- A mutual fund corporation;
- A real property brokerage corporation;
- A real property corporation;
- A service corporation;

- A body corporate engaged in the activities of a securities dealer;
- A corporation registered as a mortgage broker under the *Mortgage Brokers Act*;
- A holding body that holds investments in prescribed subsidiaries.

Related Party Transactions

Approach to Related Party Transactions

General ban approach - a credit union and its subsidiaries may not directly or indirectly, enter into any transaction with a restricted party.

The regulations require that a credit union establish procedures for ensuring compliance with the restrictions governing restricted party transactions and that these procedures form part of the investment and lending policies and procedures of the credit union. The procedures must include provisions requiring a restricted party to disclose that party's interest in a transaction with a credit union or subsidiary.

Allowable Transactions

The act specifically permits the credit union to lend an officer, committee member or director an amount in excess of the aggregate deposits of the officer, committee member or director if recommended by the credit committee and approved by the board.

Additional allowable transactions with restricted parties prescribed by the regulations are:

- a nominal or immaterial transaction based on criteria established by the board;
- the issue of fully paid for shares, a share dividend, a patronage return, exchange of shares in an amalgamation or for another body corporate or other property;
- a contract of employment with someone who is not an officer or director
- a deposit made by credit union with a restricted party for clearing purposes;
- a contract to borrow money from a restricted party;
- receipt of deposits from a restricted party
- issuance of debt obligations to a restricted party
- if approved by two-thirds of the directors,
    - a written contract for the purchase of goods or services, for a period not exceeding five years;
    - a written contract for purchase of management services if it is reasonable and provided the amount paid is at fair market value;
    - a written lease of personal property, for a term not to exceed 5 years and at fair market value;
    - a written lease of real property, for a term not to exceed 10 years and at fair market value;
    - a contract of employment with a director or officer and employment benefit and pension plans
    - a residential mortgage or a personal loan if the credit union is

authorized to make the loan and terms no more favourable that those offered in the ordinary course of business by the credit union to its members.

If two-thirds of the directors have approved in advance the terms of the loan, a credit union may make a residential or personal loan to a director, officer or committee member on terms *more favourable* than those offered in the ordinary course of business of the credit union; or another type of loan on terms no more favourable.

Reporting and Audit

Required Reports

Financial statements and auditor's report must be placed before the members at the annual general meeting. The financial statements must be approved by the directors before being presented to the members. The financial statements must be prepared in accordance with generally accepted accounting principles, unless otherwise specified by the Superintendent.

Scope of Financial Statements

Prepared on a unconsolidated basis. The latest financial statement of the credit unions subsidiaries must be kept on hand at the credit union's head office and be open to examination by the members.

Powers and Duties of Auditors

The auditor must report to the members of the financial statements placed before the members at the annual meeting.

The auditor of a credit union has right of access at all times to all records, documents and accounts of the credit union and may require information form directors, officers, employees and agents.

The auditor may call a meeting of the audit committee at any time and is entitled to received notice of, and attend, any meeting of the members or shareholders of the credit union and to be heard at these meetings.

The auditor must report to the credit union, the directors and the audit committee and the Superintendent, deposit insurer and stabilization authority any transaction of condition that has come to the auditor's attention that may affect the well-being of the credit union and which in the auditor's opinion require rectification.

Audit Committees

Composition

A credit union must have an audit committee consisting of at least three members; a member of the credit committee not be a member of the audit committee A member of an audit committee must meet the qualifications of a director of a credit union.

Powers and Duties

The audit committee must immediately notify the board, the auditor, the deposit insurer, the stabilization authority if any for the credit union of any misappropriation of funds or property of the credit union, or if the board, a director, the credit committee or its members or an officer or employee has contravened or failed to comply with the legislation.

Removal/ Resignation of Auditor

The board may fill a casual vacancy in the position of auditor.

A person, other than the incumbent auditor, may not be appointed by the members as auditor unless a member has given 15 days notice prior to the meeting of the member's intention to nominate another person as auditor. The incumbent auditor is entitled make a written representation as to why the nominated auditor should not be appointed and the credit union must provide this to its members.

The members of a credit union may remove an auditor before auditor's term expires by a resolution passed at a general meeting of members called for that purpose. The auditor is entitled make a written representation concerning the proposal to remove the auditor and the credit union must provide this to its members.

If the members remove an auditor at a meeting they must elect another auditor at the same meeting.

The credit union must notify the Superintendent, deposit insurer and stabilization authority of the credit union when an auditor resigns, is replaced or is removed

Other Provisions

The superintendent may require the auditor to make an examination related to the adequacy of the procedures adopted by the credit union for the safety of its creditors, members and shareholders or any other examination that the public interest may require. The Superintendent may also require a special audit of the credit union at the expense of the credit union

Regulatory Duties & Powers

Role of Elected Officials

The Minister is responsible for incorporating a credit union and approving amalgamations.

Regulatory Framework

Regulatory Organization

The Superintendent of Financial Institutions of the Financial Services Commission of Ontario is responsible for the regulation of credit unions and making regulatory decisions under the Act.

The Deposit Insurance Corporation of Ontario is responsible for providing deposit insurance for credit union and is responsible for stabilization of credit unions.

Inspection/ Examination

A credit must file an annual return with the Superintendent in the form an manner determined by the Superintendent. The Superintendent may at any time visit a credit union's offices and inspect and examine its affairs. If the Superintendent believes that a credit union is unable to provide payment of its liabilities as they become due the Superintendent shall immediately notify the deposit insurer and the stabilization authority for the credit union.

A credit union must provide on demand information required by the Superintendent. The credit union must give the Superintendent access to all books, records and other documents.

Regulatory Powers

The Superintendent may appraise the value of an asset of a credit union or subsidiary and where the appraised value varies materially from the value placed on the asset by the credit union, the Superintendent will send written notice of his or her valuation to the credit union, its auditor, the audit committee and the stabilization authority. If it appears to the Superintendent from an examination that the assets shown on the annual return are at greater than fair value the Superintendent may require the credit union to set aside additional provision as the Superintendent considers necessary.

The Superintendent may order a credit union to discontinue business for such time after an inspection as the Superintendent is satisfied that the continuance in business of the credit union is not in the interests of members, depositors or shareholders. The Superintendent will immediately inform the deposit insurer and stabilization authority of such an order and the reasons for it.

The Superintendent may make an order

- that a person cease doing any act or pursuing any course of conduct or to do any act or pursue a course of conduct;
- that a credit union dispose of assets not made or held in accordance with the legislation and the credit union has 60 days to dispose of the assets;
- that a credit union call a loan not made in accordance with the legislation and the credit union has 60 days to call the loan;

Offences and Penalties

Types of Offenses

Any person who contravenes the Act or regulations, or an order of the Superintendent is guilty of an offence.

Administrative Penalties

No provision for administrative penalties **[confirm]**

Criminal Penalties

A person guilty of an offence is subject to

- In the case of an entity, on the first conviction, a fine of not more than $100,000 and on each subsequent conviction, a fine of not more than $200,000;
- In the case of an individual, on the first conviction, a fine of not more than $100,000 and imprisonment of up to two years or both, and on each subsequent conviction, a fine of not more than $200,000 and imprisonment of up to two years or both.

The court may require a person convicted of an offense to make restitution.

The Superintendent may apply to the court for an order setting aside a prohibited restricted party transaction and making a payment for damages.

A credit union that is in default of providing information to the Superintendent payment of an assessment or annual premium of the deposit insurer, stabilization authority, or Minister of Finance or Lieutenant Governor in Council is liable to a fine of up to $500 for each day the default continues.

Recourse

Right to Hearing

Before making an order that a credit cease an act or course of conduct or undertake an act or course of conduct, or placing it under supervision, the Superintendent must give the credit union notice of his or her intention and a person has 15 days to provide a request for a hearing before the Superintendent and the Superintendent will hold a hearing without reasonable delay. The Superintendent may make an order without a hearing if he or she is of the opinion that the interests of members, depositors and shareholders may be prejudiced or adversely affect by a delay in issuing the order.

Appeals Structure and

A person may appeal an order of the Superintendent to cease an act or course of conduct or undertake an act or course of conduct, or an order

Process

placing a credit union under supervision, to the Financial Services Tribunal within 15 days after receiving the order. An appeal shall be based on the evidence presented to the Tribunal. An appeal lies to the court from an order made by the Tribunal.

Where the Deposit Insurance Corporation places a credit union under administration, the credit union has seven days to appeal to the Tribunal and the Tribunal has 10 days to hold a hearing and must make a decision within seven days of the hearing

Where the Superintendent makes an order requiring a credit union to increase its capital or provide additional liquidity, the credit union may appeal this decision to the Tribunal within 15 days of receiving the Superintendent's decision. The appeal does not stay the Superintendent's decision.

Stabilization/Supervision

Stabilization/ Supervisory Authority

The Deposit Insurance Corporation of Ontario is the stabilization authority for all credit unions. On application, the Corporation may designate a league or association of credit unions as a designated stabilization authority for the benefits of its members (none designated to date). If the Corporation refuses to designate a league as a stabilization authority, the league may appeal this to the Tribunal within 15 days of the decision. The Tribunal may affirm or reject the Corporation's decision and the Tribunal's decision is final.

The Deposit Insurance Corporation may revoke a designation if the league is not in compliance with its capital and liquidity requirements, it did not comply with a condition of its designation, it is not in the interests of a credit union under the stabilization authority that the credit union remains under its authority, the league asks to have its designation revoked. A designation is automatically revoked if the league resolves to wind up or the court or Superintendent orders the league wound up.

Every league or association of credit unions designated as a stabilization authority may establish and maintain a stabilization fund and may assess member credit unions for the purpose of maintaining the fund.

Stabilization/ Supervisory Powers

The Superintendent may, on the request of a stabilization authority, order a credit union subject to stabilization if

- requested by the credit union,
- the credit union is not in compliance with the capital and liquidity requirements,
- the credit union is conducting its affairs in a manner the might harm the interests of members or depositors or that tends to increase the risk of claims against the fund;
- the credit union has not submitted reports as required,
- the credit union did not comply with a Superintendent's order, or
- the credit union is not complying with its own investment and lending policy.

A stabilization authority has the power to order the credit union to correct practices; establish guidelines for operations, provide financial assistance order directors or officers not to exercise their powers, order credit union not to pay dividends, attend meetings and propose bylaw amendments.

A credit union remains under supervision until the Superintendent orders that the credit union is released from supervision or it is wound up or placed under administration.

The Deposit Insurance Corporation may order a credit union subject to administration where the Corporation has reasonable grounds to believe

- the credit union is conducting its affairs in a manner the might harm the interests of members or depositors or that tends to increase the risk of claims against the fund and that supervision by a stabilization authority would not be appropriate in the circumstances;
- the credit union has contravened an order of the stabilization authority;
- the credit union's assets are not sufficient to give adequate protection to depositors;
- the credit union has or will be unable to pay liabilities as they become due;
- the stabilization authority has requested that the credit union be placed under administration; or
- the superintendent has ordered the credit union to discontinue business.

Where a credit union is under administration of the Deposit Insurance Corporation the Corporation may:

- carry on and conduct the credit unions affairs and business;
- require the credit union to amalgamate, dispose of its assets or be wound up without the consent of the members or shareholders of the credit union.

JURISDICTION – SASKATCHEWAN

Regulatory Approach

Activity or Entity The approach is to regulate the entity – credit unions – and the activities permitted by credit unions versus regulating the activity and prohibiting unlicensed entities from engaging in the regulated activities.

Nature of Approach All credit unions are subject to the same general level of regulation.

Corporate Framework

Incorporation

Incorporation Requirements Twenty-five or more persons may apply to be incorporated as a credit union by filling with the Registrar of Credit Unions the proposed articles, bylaws and other required information.

The Registrar will issue a certificate of incorporation if the articles and bylaws are filed, the proposed credit union is viable, the Credit Union Deposit Guarantee Corporation will insure deposits and he/she is satisfied that:

- the proposed provisional directors are qualified to be directors; and
- the proposed credit union is organized and will be operated on a cooperative basis.

Every credit union must have the words "credit union" or "caisse populaire" in its name.

Incorporation Restrictions No individual may be an incorporator of a credit union if they are

- is less than eighteen years of age;
- is found to be of unsound mind,
- has the status of a bankrupt;
- has been convicted in the past five years of a criminal offences punishable by a term of imprisonment of five years or more.

A credit union may have a bond of association, and if so, must specify the bond in its articles.

Members may set restrictions on the business of a credit union in its articles.

Significant Changes

Types of Changes *Amalgamation* – two or more credit unions may amalgamate and continue as one credit union and where the laws governing the incorporation or continuance of an entity permit or authorize the amalgamation, a credit union many amalgamate with the entity and continue as one credit union.

Subsidiary amalgamations – a credit union and one or more of its wholly owned subsidiaries may amalgamate and continue as one credit union.

Extraordinary Sale of Assets – the sale, lease or exchange of all or substantially all of a property of a credit union other than in the ordinary course of business.

Arrangements – where a not insolvent credit union finds that it is not practicable to effect a fundamental change through other means, it may apply to the court for an order approving an arrangement proposed by the credit union.

In addition, if authorized to do so by the laws of the jurisdiction where it is incorporated, an entity, including an extraprovincial credit union, may apply to the Registrar for a certificate of continuance.

Requirements Related to Significant Changes

Each credit union and other entity planning to amalgamate must enter into an amalgamation agreement for approval by special resolution of the members of credit union. In the case of a subsidiary amalgamation, only the amalgamating credit union must pass a special resolution. The amalgamation agreement must include provision that all assets and liabilities are covered in the amalgamation.

The Registrar will issue a certificate of amalgamation, if CUDGC has approved the amalgamation, and if the Registrar is satisfied that the amalgamated credit union will be able to pay its liabilities as they become due, the realizable assets of the credit union are not less than the aggregate value of its liabilities and stated capital and no creditor will be prejudiced.

An extraordinary sale of assets requires the approval of CUDGC and the credit union's members and shareholders by special resolution.

Where an arrangement is being proposed, the Registrar and CUDGC must receive notice of the application to court and are entitled to appear and be heard. Approvals of the Superintendent and/or CUDGC must be obtained where required, before the court can order an arrangement.

Dissolution

Dissolution by Members and Shareholders – subject to the approval of the Registrar, a credit union may by special resolution of its members, dissolve the credit union.

Dissolution by Registrar – where the Registrar has reason to believe that a credit union has not carried on business for two consecutive years or is in default for one or more years in sending required documentation or fees to the Registrar or CUDGC, the registrar may, following notice, strike the credit union off the register and dissolve the credit union. If the registrar is satisfied that the credit union has no assets, the Registrar will issue a certificate of dissolution, or appoint a liquidator to dissolve the credit union.

Dissolution for failure to account for business transacted – where the board of a credit union fails to call a special meeting of the credit union required by the Registrar to review the financial position of the credit union for the prior year and ascertain whether the members desire to continue the credit union, the registrar may if satisfied that the credit union has no assets, issue a certificate of dissolution, or appoint a liquidator to dissolve the credit union.

Dissolution by court order – the Registrar, CUDGC, or an interested party may after giving a credit union three month's notice, apply to court for an order dissolving the credit union where the credit union:

- obtained its incorporation by fraud or mistake;
- exists for an illegal purpose;
- has willfully, after notice by the Registrar, contravened a provision of the Act or its articles;
- in not acting in compliance with the legislation or a standard of sound business practice;
- the number of its members is below 25 as required for incorporation;
- has failed to comply with a compliance order of the Registrar or of CUDGC;
- is, in the opinion or CUDGC, no longer viable.

At any time during the dissolution of a credit union, an interested person may apply to the court for an order that the dissolution be supervised by the court and the court must give notice to the Registrar and CUDGC and give them an opportunity to be heard and may appoint a liquidator. CUDGC may also appoint a liquidator where a credit union is being dissolved and the members or the court have not appointed a liquidator.

Notice of dissolution must be published in the Gazette.

Membership Requirements

Membership in a credit union is governed by the bylaws of the credit union.

The Act provides specifically for the admittance of members under the age of 18 years.

Shares

Membership Shares

A credit union must have one class of shares designated as membership shares that may only be issued to members.

Other Types

A credit union may also, with the approval of CUDGC and if approved by the members, issue investment shares. Investment shares may be issued to non-members, if specified in the articles of the credit union.

General Restrictions/ Prohibitions

Membership shares may only be issued at par value. Investment shares are without par value.

Membership shares confer on their holders the right to receive dividends and receive the remaining property of the credit union on dissolution, where provided by the articles.

The articles must establish any special rights, restrictions or privileges for investment shares.

No person may beneficially own more the 10% of the investment shares in a credit union.

Corporate Governance

Board Committees

The board may appoint any committee that it considers necessary and may delegate any powers that it considers necessary for the efficient and effective conduct of the business and affairs of the credit union. If the bylaws permit, non-members of the board may be appointed to committees, but not less than 80% of directors on a committee must be directors elected or appointed by members.

A credit union is required under the Act to appoint an audit committee (see "Reporting and Audit") and a Conduct Review Committee.

The Conduct Review Committee must consist of at least three directors and is responsible for

- establishing procedures for the review of transactions with related parties and for reviewing the efficiency and effectiveness of such procedures
- reviewing all proposed transactions with related parties;
- reviewing the practices of the credit union ensure that related party transactions are identified; and
- providing timely reports to the board on these matters.

Where the board fails to appoint a Conduct Review Committee, the board as a whole shall act as the committee.

Standard of Care for Directors and Officers

The directors of a credit union are responsible for exercising the powers of the credit union directly or through its employees and agents and for directing the management of the business and affairs of the credit union.

Every director (and officer) must in carrying out his or her duties act honestly and in good faith with a view to the best interests of the credit union, and exercise the care, diligence and skill that a reasonably prudent person would exercise incomparable circumstances.

Directors Qualifications

No person is eligible to be a director of a credit union who:

- is not 18 years of age;
- is of unsound mind;
- is not an individual;
- is not a member of the credit union;
- is an employee of the credit union or CUDGC;
- has been convicted in the preceding five years of a criminal offence that is punishable by a term of imprisonment of five years or more, or an offence under the *Credit Union Act*;
- has the status of a bankrupt;
- is a professional adviser to the credit union;
- has failed to comply with the purchase and redemption requirement related to capital; or
- is a person prescribed in regulations.

Director's Training

No requirements for director's training.

Resignation/ Removal of Directors

By two-thirds vote the members of a credit union may remove a director from office.

A director who resigns or receives notice of a meeting called for the purpose of removing him or her from office, or where another person is to be appointed to fill the office of the director because of resignation or removal, is entitled to submit to the credit union a written statement giving the reasons for the resignation or why they oppose the proposed action. The credit union must distribute such a statement to its members.

Operations

Deposit Taking

A credit union may accept deposits from non-members if permitted under its articles and if in compliance with regulations and standards of sound business practice.

A credit union may accept deposits from any person whether the person can legally enter into contracts or not and pay interest on the principal and the pay the principal and interest on demand to the depositor. A credit union has a charge on deposits for a debt of the depositor to the credit union.

Deposits in credit unions are guaranteed by CUDGC to the full amount of each deposit, other than a deposit excluded by the regulations.

Business Powers

A credit union has the capacity and rights, powers and privileges of a natural person, subject to the legislation.

A credit union must not engage in any business other than the business of providing financial services. Provision of financial services includes:

- deposit taking
- providing financial arrangements;
- acting as a financial agent;
- providing investment counselling and portfolio management;
- issuing payment, credit or charge cards and operating payment, credit or charge card plans.; and
- networking.

In addition a credit union may subject to the regulations:

- promote merchandise and services to holders of payment, credit and charge cards issued by the credit union;
- acting as custodian of real and personal property;
- acting as a receiver, liquidator or sequestrator;
- holding, managing or otherwise dealing with real or personal property;
- providing information processing and advisory services and designing and marketing information management systems;
- providing services to its affiliates, Credit Union Central and its affiliates, and affiliates of another credit union, and financial institutions and their affiliates;
- providing administrative, educational, promotional, technical, research and consultative services to its members; and
- providing nay other services prescribed by regulation.

Restrictions on Business Powers

A credit union must provide financial services primarily for the benefits of its members; it may provide financial services to non-members if authorized by its articles and if it complies with the regulations and standards of sound business practice in providing those services.

A credit union is specifically prohibited from

- underwriting insurance;
- undertaking the business of insurance expect as permitted by regulations;
- issuing securities of another person;
- dealing in securities to the extent restricted by regulation;
- acting as an executor, administrator or official guardian or trustee for a trust, unless permitted by regulation;
- unless permitted by CUDGC, being a general partner in a limited partnership or a partner in a general partnership;
- guaranteeing the payment of money on behalf of another person unless it is a fixed sum and the person has an unqualified obligation to reimburse the credit union, unless the person is a subsidiary of the credit union. .

Business Outside Province

Subject to the legislation, a credit union has the capacity to carry on business and conduct its affairs outside of Saskatchewan, to the extent permitted under the laws of that other jurisdiction.

Branching Restrictions

There are no specific provisions in the legislation related to branching. There is, however, a 30 day notice requirement in the Standards of Sound Business Practices.

Borrowing Capacity

A credit union must not issue subordinated debt unless the debt is fully paid in money.

Authorization to Engage in Business

Approval

A credit union may not commence business until the Registrar approves by order the commencement and carrying on of business by the credit union.

Commencing Business Requirements

The Registrar will not issue an order allowing the credit union to commence business unless the credit union

- has held the required first meeting of members;
- the expenses of incorporation and organization are reasonable;
- all other relevant provisions of legislation have been met;
- the credit union can comply with the legislation and the standards of sound business practice.

The Registrar will not issue an order approving the commencement of business if more that two years has passed since the credit union was incorporated.

Capital & Liquidity

Approach to Capital Adequacy

The approach to capital is to rely on a credit union maintaining adequate capital to support its operations.

Capital Requirements

A credit union must maintain capital that is adequate for its operations and must comply with established Standards of Sound Business Practice respecting its capital assets. CUDGC may specify in a standard of sound business practice the amount of capital to be held by the credit union. If a credit union fails to maintain the capital required by CUDGC, CUDGC may place the credit union under supervision or administration.

Notwithstanding that a credit union may be in compliance

Notwithstanding that a credit union may be in compliance with the Standards of Sound Business Practice with respect to capital, CUDGC may order it to increase its capital and may place a credit union under supervision if it fails to comply with the order.

Restrictions on Capital

A credit union may not redeem or purchase shares or debt, or pay a dividend, if it has reason to believe that the payment would cause the credit union to be in contravention of its capital adequacy requirements.

Liquidity Requirements

A credit union must maintain liquid assets that are adequate and appropriate for its operations and must comply with the regulations and standards of sound business practice respecting its liquid assets.

For the purpose of meeting its liquidity requirements, a credit union must have to its credit with the Credit Union Central, or pursuant to an arrangement specified by the Central, a deposit or security acceptable to the Central in the amount required by the Central. In addition, the credit union must maintain liquid assets that may be required by sound business practice as specified by CUDGC.

If a credit union fails to maintain the required liquidity, CUDGC may place the credit union under supervision or administration.

Notwithstanding that a credit union may be in compliance with regulations and standards of sound business practice with respect to liquidity, CUDGC may order it to increase its liquid assets and may place a credit union under supervision if it fails to comply with the order.

Investment & Lending

Approach to Investment and Lending

The act establishes a prudent portfolio approach to investment and lending. The board of a credit union is required to adopt written investment and lending policies and procedures that a reasonable person would apply in respect of a portfolio of investments and loans to avoid undue risk of loss and obtain a reasonable return. The investment and lending policies must meet the requirements of the legislation and the standards of sound business practice.

The CUDGC has the power to order the board to revise its investment and lending policies and procedures if it feels that these and deficient in relation to that credit union.

CUDGC also has the power to order a credit union to dispose of an investment or loan that does not comply with the legislation or in the opinion of CUDGC, the investment or loan is not appropriated because of undue financial risk to the credit union.

CUDGC can place a credit union under supervision for failure to comply with an order.

Investment and Lending Limits and Restrictions

No specific investment and lending restrictions, other than restrictions on investments in subsidiaries or affiliates are established in the legislation. The specific investment and lending restrictions are found in the Standards of Sound Business Practices.

Investment in Subsidiary/ Affiliates

With the prior approval of CUDGC, a credit union may acquire or increase a substantial investment (10% in any class of shares of a body corporate or 10% interest in an entity) in the following:

- a financial institution;
- a factoring corporation;
- a financial leasing corporation;
- an information services corporation;
- an investment counselling and portfolio management corporation;
- a mutual fund corporation;
- a mutual fund distribution corporation;
- a real property brokerage corporation;
- a real property corporation;
- a service corporation;
- a specialized financing corporation;
- a financial holding corporation that does not have a substantial investment in an entity other than an permitted entity or a real property holding vehicle, or any other entity in which a financial institution or specialized financing corporation controlled by the financial holding corporation has a substantial investment.
- a body corporate whose activities are ancillary to the business of a credit union or financial institution that is its subsidiary;
- a body corporate that engages in two or more of the businesses or activities of permitted entities;
- a real property holding vehicle
- a community services corporation;
- an entity that is not a body corporate, but whose business is substantially the same to those of any body corporate in which a credit union is allowed to invest.

A credit union may apply to CUDGC for approval to acquire an investment in an entity not included in the list of permitted entities provided the business is substantial similar.

Related Party Transactions

Approach to

The approach to related party transactions is to define related parties and

Related Party Transactions

then establish a general prohibition against entering into transactions with related parties, subject to certain allowable transactions.

Related parties are defined as:

- a person who has a significant interest in a class of investment shares of the credit union,
- a director or senior officer of the credit union,
- a spouse, or child who is less than 18 years of age of either a person with a significant interest in the investment shares or a director or officer,
- an entity controlled by either a person with a significant interest or a director or officer,
- an entity in which a person mentioned above has a substantial investment;
- a entity in which the spouse, or a child less than 18 years of age, of a person mentioned above has a substantial investment, or
- is a person designated by CUDGC as a related party.

Directors and officers are also required to disclose where they have an interest in a material contract or proposed material contract with the credit union.

Allowable Transactions

A credit union may enter into the following related party transactions:

- where the value of the transaction is nominal or immaterial to the credit union when measured against criteria established by the conduct review committee;
- purchase or acquire securities of, or guaranteed by, the government of Canada or a province;
- purchase or acquire assets fully secured by securities of, or guaranteed by, the government of Canada or a province;
- purchase or acquired goods for use in the ordinary course of business;
- sale of assets of the credit union to a related party where the consideration for the assets is fully paid in money and there is an active market for those assets;
- acquire or dispose of assets, other than real property, from or to a related party of the credit union that is a financial institution;
- acquire or dispose of assets in the course of a restructuring if approved by CUDGC;
- lease of assets by the credit union from a related party for use in ordinary course of business or to a related party if the lease payments are made in money;
- written contract for the purchase of services used in the ordinary course of business;
- provision of services normally offered to the public by the corporation in the ordinary course of business;

- written contract providing for the networking of services and referrals;
- written contract for pension or benefit plans and their administration as incidental to the directorships or employment of officers or employees; and
- provision of management, advisory, accounting, information processing or other services in relation to the business of a related party.

All of these allowed related party transactions must be made on the basis of market terms and conditions except for:

- loans to full-time senior officers that may be made on terms and conditions more favourable than market terms and conditions, if the terms and conditions have been approved by the Conduct Review Committee;
- financial services, other than loans and guarantees to directors and officers, that may be made on preferred terms and conditions provided those preferred terms are also provided to other employees, and the Conduct Review Committee has approved the practice.

A credit union may with the prior approval of the conduct review committee, and subject to limits and standards of sound business practice, enter into certain transactions with related parties.

Reporting and Audit

Required Reports

Annually, a credit union must prepare and place before its members, a comparative financial statement, including the report of the auditor, and any other required information.

Scope of Financial Statements

The board must include with financial statements of the credit union a list of all subsidiaries, including the book value of shares and the percentage of voting rights in the subsidiaries.

A credit union must keep at it registered office a copy of the current financial statements of all subsidiaries and make these available to examination by its members.

Unless CUDGC approves otherwise, the auditor of a credit union must be the auditor of the credit union's subsidiaries.

Powers and Duties of Auditors

The auditor is responsible for making an examination and reporting on the annual statement and other financial statements under the Act that must be placed before shareholders.

The auditor has the right to request information from present and former directors, officers and employees and they must permit access to records and provide information to the auditor.

The auditor is entitled to receive notice of every meeting of the members of the credit union and where requested by a member, must attend a meeting of members and answer questions relating to his or her duties.

The auditor is also entitled to receive notice of every meeting of the audit committee and to attend and be heard. A member of the audit committee may request the auditor attend every meeting of the audit committee. The auditor may call a meeting of the audit committee and the person responsible for the internal audit function must meet with the auditor at the request of the auditor.

The auditor is required to make a report to chief executive officer, the president and the audit committee of any transactions that have come to the auditor's attention that may affect the well-being of the credit union and that may need to be rectified. The report must be submitted to board of the credit union and CUDGC.

A director or officer must immediately notify the audit committee and the auditor of any material misstatement or error in the financial statement that they become aware of and the auditor must notify the directors if he or she becomes aware of a material misstatement in the financial statements of the company. The directors are required to prepare and distribute a revised annual financial statement in these circumstances and must notify CUDGC.

Audit Committees

Composition

The board must appoint an audit committee consisting of at least three directors; employees of the credit union are not entitled to be members of the audit committee. Where a credit union fails to appoint an audit committee the board as a whole must act as the committee.

Powers and Duties

The audit committee is responsible for

- reviewing with the auditor the scope of the audit before the auditor commences his or her duties;
- reviewing the financial statements of the credit union before they are approved by the board;
- reviewing any returns that the Registrar may direct;
- reviewing any investment and lending transactions that could adversely affect the well-being of the credit union;
- meeting with the auditor to discuss the financial statements and returns and transactions; and
- meeting with the internal auditor and management of credit union to discuss the effectiveness of the internal control procedures established for the credit union.

Removal/ Resignation of Auditor

The members of a credit union may by ordinary resolution at a meeting, revoke the appointment of an auditor. They must give immediate notice of such a removal to the Registrar and CUDGC.

An auditor who resigns or receives notice of a meeting of members called for the purpose of removing the auditor, or appointing another person as auditor, must submit to the credit union a written statement giving the reasons for his or her resignation or why he or she opposes the proposed action. A copy of such a notice must be provided to the Registrar, CUDGC and every member and shareholder. The new auditor must also request and be provided a copy of such a statement and the appointment of the new auditor is void unless this requirement is complied with.

Other Provisions

CUDGC may require that the auditor

- report on the extent of the auditor's procedures;
- extend the scope of his or her examination;
- make a particular examination relating to the adequacy of procedures

adopted by the credit union; or

- conduct a special audit and report to CUDGC and the Registrar.

The expense of a special audit must be borne by the credit union where approved by CUDGC.

The Registrar or CUDGC, with notice to each other, may also appoint an auditor to make a special audit of the books of the credit union and examine business and affairs of a credit union and report to the Registrar and CUDGC.

Regulatory Duties & Powers

Role of Elected Officials

Elected officials have no direct responsibility under the legislation for the regulation of credit unions.

Regulatory Framework

Regulatory Organization

Under the legislation, the Registrar is responsible for incorporation and approving credit unions to commence business. The Registrar also plays and role in the day to day regulation of credit unions. With respect to the solvency regulation of credit unions, CUDGC plays a lead role with some shared between CUDGC and the Registrar.

The recently passed *Saskatchewan Financial Services Commission Act* (assented to July 10, 2002) integrates the office of the three financial services regulators – the Financial Institutions Section of the Consumer Protection Branch, which includes the office of the Registrar, the Pensions Benefits Branch and the Saskatchewan Securities Commission – into a single financial services regulatory organization, the Saskatchewan Financial Services Commission.

Inspection/ Examination

The Registrar or CUDGC may make

- examinations of the business and affairs of a credit union; and
- inquiries of any person in the course of those examinations.

The Registrar, CUDGC or an auditor appointed by the Registrar or CUDGC, has access to any records, cash or assets within the control of a credit union and its affiliates and make request any person to provide records, information and explanations.

There is no requirement for a regular annual inspection of credit union. **[confirm].** However, every credit union must file with the Registrar an annual return for the previous year and the Registrar may request a special return from any credit union on any subject connected with the business and affairs of the credit union.

Regulatory Powers

The Registrar may at any time and in any form require a credit union to prepare and deliver a report containing information prescribed by regulation.

The Registrar or CUDGC has the power to make examinations and inquiries of credit unions (see above).

It also has, with notice, power to request a court order that an investigation be made of a credit union or its affiliates, if the credit union is

- not fulfilling the purposes stated in its articles,

- the credit union is not carrying on business in accordance with restrictions in its articles or the legislation,
- the credit union is not being organized or operated on a cooperative basis,
- the business of the credit union or any of its affiliates is or has been carried on with the intent to defraud any person
- the business of the credit union or its affiliates in being carried on or conducted in a manner that is oppressive or unfairly prejudicial to or unfairly disregards the interest of a member or a shareholder,
- the credit union or any of its affiliates was formed for a fraudulent or unlawful purpose,
- persons concerned with the formation and business and affairs of the credit union have acted fraudulently or dishonestly. ;

In connection with such an investigation, the court may also appoint an inspector and authorize the inspector to enter premise, examine and take copies of documents, conduct hearings and make interim or final reports tot he court.

The Registrar also has the power of examination and inquiry with respect to other persons governed by the Act to ensure that there is compliance with the Act. The Registrar may in writing request that a person produce records or property and may make copies of any record. The court may ,on oath of the Registrar, issue a warrant allowing for the Registrar to enter, search and seize information.

As well, the Registrar has the authority to issue cease and desist or compliance order where a person is not in compliance with the act or may be acting in a way that will put them in non-compliance with the act, or a person is acting in a way as to harm the interests of consumers.

Offences and Penalties

Types of Offences

Every person who without reasonable cause contravenes a provision of the legislation is guilty of an offence.

A person is also guilty of an offence where that person

- knowingly hinders or prevents an examination
- without reasonable cause, fails to comply with a written request for records or property;
- makes a false or misleading statement in an examination, return or report;
- knowingly seeks unauthorized access to or falsifies any credit union records;
- knowingly withholds or destroys, alters of conceals a record that the registrar requires for the purpose of determining whether a person is in compliance with the legislation; or
- if a director or officer, acquiesces or participates in the commission of the offence.

Criminal

A person convicted of an offence is liable to

Penalties

- in the case of an individual, a fine not exceeding $500,000 or to imprisonment of a term not exceeding 12 months, or both;
- in the case of an entity, a fine not exceeding $1,000,000.

In addition to the penalty, the court may issue a compliance or cease and desist order with respect to the matter the person was convicted.

Administrative Penalties

No provision for administrative penalties.

Recourse

Right to Hearing

The legislation provides that notice of major regulatory actions is to be provided to affected parties.

Appeals Structure and Process

A person aggrieved by a specified decision of the Registrar (including refusal to issue certificate of incorporation, certificate of discontinuance or arrangement or order to dissolve a credit union) may appeal to court.

Stabilization/Supervision

Stabilization/ Supervisory Authority

CUDGC is responsible for credit union deposit insurance and stabilization and supervision of credit unions.

The Registrar, however, retains overall authority over CUDGC and may issue a directive to CUDGC if the Registrar is satisfied that CUDGC is not complying with the legislation or its business practices are likely to create a material risk to the fund. A directive of the Registrar may require that CUDGC cease doing an act or failing to comply with the legislation, comply with the legislation or an order of the Registrar or to do or refrain from doing or do any other thing that the Registrar considers necessary.

If CUDGC fails to comply with a directive of the Registrar, the Registrar may place CUDGC under supervision.

The Registrar may conduct examinations of CUDGC.

Stabilization/ Supervisory Powers

As deposit insurer, CUDGC has a range of powers and authorities. It is responsible for establishing the procedures for a depositor making a claim against the fund and for paying claims out of the fund. It may reduce the level of guarantee and it may levy assessments against credit unions necessary to maintain the fund.

Consistent with its responsibility for stabilization of credit unions, CUDGC shares many regulatory powers with the Registrar (see above) and also has authority to

- issue standards of sound business practice, in consultation with the Registrar;
- examine the business of a credit union and its books and records;
- appraise the value of an asset of a credit union or subsidiary and where the appraised value varies materially from the value placed on the asset by the credit union, CUDGC will send written notice of its valuation to the credit union, its auditor, and the audit committee;
- issue an order to a person to cease doing an act or failing or to cease neglecting to do an act, comply with the legislation and standards of

sound business practice, or to do or refrain from doing or do any other thing that CUDGC considers necessary;

- apply to court for an order directing a person comply with an order of CUDGC; and
- if CUDGC is of the opinion that a credit union has not observed standards of sound business practice, a credit union has failed to comply with an order of CUDGC or there is risk to the fund, it may after giving the credit union an opportunity to be heard, place the credit union under supervision or administration;
- if CUDGC has made payment out of the fund to the credit union or on behalf of the credit union, the directors have failed to undertake actions directed by CUDGC, or CUDGC feels that the amalgamation is desirable to protect the fund, CUDGC may, after giving the credit union the opportunity to be heard, require a credit union to amalgamate with another credit union.

Where a credit union is placed under administration, CUDGC will exercise all the powers of the board of the credit union, take custody of the credit union assets and manage the business of the credit union. If CUDGC places a credit union under supervision it will monitor the management of the credit union and make recommendations to the credit union's management.

Trust Companies

JURISDICTION – FEDERAL GOVERNMENT

Regulatory Approach

Activity or Entity Regulatory approach is based on the regulation of the entity – trust and loan companies - versus the financial activity.

Nature of Approach Generally, each trust and loan company is subject to the same level of regulation.

Corporate Framework

Incorporation

Method of Incorporation On application by one or more persons, the Minister may issue letters patent incorporating a company.

Prospective incorporators must publish notice of intent to incorporate in the Gazette and in a newspaper in general circulation at or near the place the head office is to be situated; any person who objects to the incorporation may submit an objection to the Superintendent who must inform the Minister. The application to incorporate is filed with the Superintendent. If satisfied that it is necessary and in the public interest, the Superintendent may hold a public inquiry into the objection to the application and make a report to the Minister. The Minister shall make the report available to the public.

Incorporation Requirements Before issuing letters patent, the Minister shall take into account all relevant matters, including:

- the nature and sufficiency of the financial resources of the applicant,
- the soundness and feasibility of the business plans and the business record of the applicant,
- the character and integrity of the applicant,
- whether the company will be operated responsibly by persons with the competence and experience suitable for involvement in the operation of a financial institution,
- the impact of the integration of the operations of the applicant with those of a company on the conduct of those operations, and
- the best interests of the financial system in Canada.

Incorporation Restrictions Governments or government entities may not be issued letters patent for the incorporation of a company.

Where the proposed company would be a subsidiary of a foreign institution that is engaged in trust or loan business and the application is made by a non-WTO member foreign institution, the Minister will not issue letters patent unless the Minister is satisfied that treatment as favourable for companies to which the Trust and Loan Companies Act ("the Act") exists or will be provided in the jurisdiction in which the foreign institution principally carries on business.

Significant Changes

Types of Changes

Types of significant changes include:

Continuance – a corporation incorporated under the *Canada Business Corporations Act*, or any other Act of Parliament may apply to Minister for letters patent continuing the corporation as a company under the *Trust and Loan Companies Act*; a body corporate incorporated other than by an Act of Parliament, if authorized by its jurisdiction of incorporation, may apply to the Minister for letters patent continuing the body corporate as a company under the *Trust and Loan Companies Act.*

Transferring to Other Federal Acts – a company may

- with the approval of the Minister, apply for a certificate of continuance under the *Canada Business Corporations Act*;
- apply for letters patent under the *Bank Act* to continue as a bank, or amalgamating and continuing the company as a bank; or
- apply for letters patent continuing the company as an association under the *Cooperative Credit Associations Act* if the company's shareholders are limited to entities incorporated under an Act of Parliament or the legislature of a province and are in the opinion of the Minister operating as credit unions or cooperative associations.

Amalgamations – two or more companies, one or more companies and one or more bodies corporate that are incorporated under an Act of Parliament, two or more bodies corporate incorporated under an Act of Parliament may apply to the Minister for letters patent amalgamating and continuing the applicants as one company. There is also provision for "horizontal short-form amalgamation" where the bodies corporate proposing to amalgamate include at least one company and all the applicants are wholly-owned subsidiaries of the same holding body corporate.

Transfer of Business – the process for allowing company to or sell all or substantially all of its assets and transfer all or substantially all of its liabilities to a federal financial institution or an authorized foreign bank.

Requirements Related to Significant Changes

The Minister will not grant approval for a continuance or discontinuance unless it has been authorized by special resolution of the shareholders. In respect of the discontinuance of a company, the Minister must be satisfied that the company holds no deposits insured by CDIC and is not carrying on fiduciary duties.

Each amalgamating company and body corporate must enter into an amalgamation agreement and the agreement must be approved by special resolution of the shareholders. Where two or more bodies corporate, none of which is a company, apply to amalgamate, certain restrictions applicable on incorporation also apply.

Each company planning to sell its assets must submit a "sale agreement" to its shareholders for approval by special resolution

Dissolution

Various types of liquidation and dissolution are provided for under the legislation, including:

Simple liquidation – where the company has no property and no liabilities, the Minister, on application may issue letters patent dissolving the company;

Voluntary liquidation and dissolution – may be initiated by directors or a proposal made by a shareholder; if the proposal to liquidate is passed by a special resolution of shareholders the Minister may, if satisfied that the circumstances warrant voluntary liquidation and dissolution, issue letters patent dissolving the company;

Court- supervised liquidation – the Superintendent or an interested party may at any time during the liquidation of a company, apply to the court for an order for the continuance of the voluntary liquidation under the supervision of the court and where the court makes such an order it may appoint a liquidator.

Ownership

Ownership Requirements

The legislation includes a "public holding requirement" that requires that a company with equity of one billion dollars or more must have, within a specified time frame, at least 35 percent of the voting rights attached to outstanding voting shares, widely held (listed and posted for trading on a stock exchange and not held by a major shareholder of the company). Specified financial institutions and entities that control a trust company may apply to the Minister for an exemption from this public holding requirement.

Ownership Restrictions

No person or entity controlled by a person shall, without the approval of the Minister, purchase a significant interest in any class of shares of a company (significant interest means the person holds in aggregate more than 10 percent of any class of the outstanding shares of the company).

Corporate Governance

Unaffiliated Directors

One-third of the directors of company must be unaffiliated directors.

Board Committees

The directors of a company must

- establish an audit committee [see section on "Reporting and Audit"];
- establish a conduct review committee responsible for reviewing procedures established by management respecting self-dealing. The conduct review committee must be composed of at least three directors, none of whom may be an officer or employee of the company or of a subsidiary of the company, and a majority of whom must be unaffiliated directors.;
- designate a committee to monitor conflict of interest procedures established by the board;
- designate a committee to monitor the procedures of the board established for providing disclosure of information to customers and for dealing with complaints.

Standard of Care for Directors and Officers

The directors of a company are responsible for managing or supervising the management of the business and affairs of the company.

Every director (and officer) must in carrying out his or her duties act honestly and in good faith with a view to the best interests of the company and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Directors Qualifications

At least one-half of the directors of a company that is a subsidiary of a foreign institution and at least two-thirds of the directors of any other company must be resident Canadians.

A company must have at least seven directors and an individual is disqualified from being a director if the individual

- is less than eighteen years of age;
- is found to be of unsound mind,
- has the status of a bankrupt;
- is prohibited from exercising voting rights attached to shares of company;
- is a person who is an agent, employee or Minister of the federal or provincial government or an agent or employee of a foreign government.

Resignation/ Removal of Directors

The shareholders of a company may by special resolution remove a director from office. A director who resigns or receives notice of a meeting called for the purpose of removing him or her from office, or where another person is to be appointed to fill the office of the director because of resignation or removal, is entitled to submit to the company a written statement giving the reasons for the resignation or why the director opposes the proposed action or resolution. Where a director resigns because of a disagreement with the other directors or officers of the company, the director must submit to the company and the Superintendent a written statement setting out the nature of the disagreement. The company must distribute such a statement to shareholders.

Licensing of Domestic Entities

Licensing Requirements

A company must not engage in business until it is approved to commence operations by the Superintendent.

Licensing Approval

The Superintendent will not make an order approving a company commencing business until the Superintendent is satisfied that:

- the required meeting of shareholders has been held,
- the company has at least $5 million in paid-in capital,
- the incorporation and organization expenses of the company are reasonable, and
- other relevant requirements of the Act have been met.

Regulation of Extra-provincial Entities

Regulatory Approach	N/A
Restrictions and Limitations	N/A
Examination	N/A

Reporting and Records

N/A

Operations

Trust and Deposit Business

No company other than a trust company shall act in Canada as an executor, administrator or official guardian or committee of a mentally incompetent person, or a trustee for a trust. A company must keep money or other assets acquired or held in trust separate and distinct from its own assets and must keep a separate account for each trust.

A company may accept a deposit from any person, whether the person can legally enter into contracts or not and pay the principal and the interest on the principal to the depositor. A company must not accept deposits in Canada unless it is a member of CDIC.

No specific provisions relating to trust only trust companies.

Business Powers

A company has the capacity of a natural person and the rights, powers and privileges of a natural person.

A company has the capacity to carry on business throughout Canada, and in a jurisdiction outside Canada as permitted by the laws of that jurisdiction.

Subject to the Act, a company must not engage in or carry on any business other than such business generally appertaining to the business of providing financial services. A company may act as a trustee, financial agent, receiver, liquidator or sequestrator; provide investment counselling and portfolio management services, issue and operate payment, credit and charge cards and operate a payment, credit or charge card plan.

A company may also

- act as an agent for vendors, purchasers, mortgagors, mortgagees, lessors or lessees of real property and provide consulting or appraisal services in respect of real property;
- hold, manage and otherwise deal with real property;
- provide specified information processing services outside Canada or in Canada, with the prior written approval of the Minister, engage in
    - (i) collecting, manipulating and transmitting
        - (A) information that is primarily financial or economic in nature
        - (B) information that relates to the business of a permitted entity;
        - (C) any other information that the Minister may by order specify

    (ii) providing advisory or other services in the design, development or implementation of information management systems ; (iii) designing, developing or marketing computer software, and

    (iv) ,designing, developing, manufacturing or selling, as an ancillary activity, computer equipment integral to the provision of information services related to the business of financial institutions or to the provision of financial services;
- with the prior written approval of the Minister, develop, design, hold, manage, manufacture and sell or otherwise deal with data transmission

systems, information sites, communication devices or information platforms or portals to provide information that is primarily financial or economic in nature and that relates to the business of a permitted entity;

- promote merchandise and services to the holders of any payment, credit or charge card issued by the company;
- engage in the sale of tickets, including lottery tickets, on a non-profit public service basis; urban transit tickets; government lottery tickets;
- act as custodian of property; and
- engage in prescribed, specialized business management or advisory services.

There is a specific provision allowing a company to network.

Restrictions on Business Powers

Subject to the Trust and Loan Companies Act, a company is prohibited from engaging in or carrying on any business other than such business generally appertaining to the business of providing financial services..

A company must not

- make guarantees unless the guarantee is for a fixed sum and the person on whose behalf the company has entered into the guarantee has an unqualified obligation to reimburse the company for the full amount;
- except as provided under the legislation, deal in goods, wares or merchandise or engage in any trade or other business;
- undertake the business of insurance expect as permitted under the Act and regulations and must not act, in Canada, as an agent for any person in the placing of insurance or lease or provide space in any branch in Canada to any person engaged in the placing of insurance;
- unless approved by the Superintendent, be a general partner in a limited partnership or a partner in a general partnership;
- deal in Canada in securities to the extent prohibited or restricted by regulations; and
- engage in personal property leasing activity in which a financial leasing entity is not permitted to engage.

Borrowing Capacity

A company must not issue subordinated debt unless the debt is fully paid in money, or with the approval of the Superintendent, in property.

Subordinated debt is deemed not to be a deposit.

Restrictions on Offices & Branching

A company must maintain a head office in Canada and must within 15 days after any change of address notify the Superintendent of the change in location of its head office.

Capital & Liquidity

Approach to Capital Adequacy

Minimum paid up capital required at incorporation and ongoing capital adequacy requirements

Capital Requirements

A company must at all times, in relation to its operations, maintain adequate capital and must comply with any regulations in relation to what constitutes adequate capital. The Superintendent may make guidelines respecting capital adequacy. Despite compliance with any regulations or guidelines, the Superintendent may by order direct that a company increase its capital.

Restrictions on Capital

None

Liquidity Requirements

A company must at all times, in relation to its operations, maintain adequate liquidity and must comply with any regulations in relation to what constitutes adequate liquidity. The Superintendent may make guidelines respecting liquidity. Despite compliance with any regulations or guidelines, the Superintendent may by order direct that a company provide additional liquidity in such forms and such amounts as the Superintendent may require.

Investment & Lending

Approach to Investment and Lending

The *Act* establishes a prudent portfolio approach to investment and lending. The directors of a company are required to establish and a company is required to adhere to investment and lending policies, standards and procedures that a reasonable person would apply in respect of a portfolio of investments and loans to avoid undue risk of loss and obtain a reasonable return.

Investment and Lending Limits and Restrictions

The prudent portfolio approach is subject to certain limits and restrictions:

- a company with $25 million or less of regulatory capital must not directly or through a prescribed subsidiary make or acquire a commercial loan if the aggregate value of all commercial loans held by the company and its prescribed subsidiaries would exceed 5 percent of the total assets of the company;
- a company with $25 million or less of regulatory capital that is controlled by a financial institution with more than $25 million of regulatory capital or a company with more than $25 million of regulatory capital may make or acquire a commercial loan if the aggregate value of all commercial loans held by the company and its prescribed subsidiaries exceeds 5 percent of the total assets of the company, only with the prior approval of the Superintendent;
- a company must not directly or through a prescribed subsidiary purchase or acquire an interest in real property loans, if the aggregate value of all interests of the company in real property would exceed 70 per cent of regulatory capital;
- a company must not directly or through a prescribed subsidiary purchase or acquire participating shares or ownership interests in an entity (other than permitted entities in which it has a substantial interest) if the aggregate value of the shares and ownership interests would exceed 70 percent of regulatory capital;
- A company shall not directly or through a prescribed subsidiary purchase or acquire participating shares or ownership interests in any entity (other than a permitted entity in which it has a substantial interest) or interests in real property if the aggregate value of the shares, ownership interests and interests in real property would exceed 100 per cent of regulatory capital;
- unless approved by the Superintendent, a company and its subsidiaries

must not acquire assets from a person or transfer assets to a person if the total value of assets acquired from or transferred to that person in the 12 months immediately preceding the acquisition or transfer would exceed 10 percent of the total assets of the company as shown in the last annual statement of the company prepared before the acquisition or transfer.

A company may not make a mortgage loan in Canada on residential property in Canada if the amount of the loan would exceed 75 percent of the value of the property, except in specified circumstances where there is security or a guarantee

Investment in Subsidiary/ Affiliates

In general, a company is not allowed to acquire control of, or to hold, acquire or increase a substantial investment in any entity, other than a permitted entity. The term "substantial investment" is defined as an interest in more than 10 per cent of the voting rights attached to all of the outstanding voting shares of a body corporate or an interest in any shares of a body corporate that exceeds 25 per cent of the shareholders' equity of the body corporate.

The term "permitted entity" is defined in the Act as including financial institutions (for example, banks, federal or provincial insurance companies, federal or provincial trust or loan corporations, credit cooperative associations, securities dealers, foreign institutions) as well as other entities that engage in specified activities. (This latter category would include such entities as factoring entities, finance companies, investment holding companies, information service entities, financial agents, mutual fund entities, investment counseling entities, and portfolio management entities.) Acquisitions of substantial investments in permitted entities are subject to approval and control requirements and other restrictions.

1. The Act also permits a company to acquire control of, or to acquire or increase a substantial investment in non-permitted entities as temporary investments or pursuant to loan workouts or realizations of security. In each case, the company must divest itself of the investment within a specified period of time.

Related Party Transactions

Approach to Related Party Transactions

The legislation defines related parties and then establishes a general prohibition against entering into transactions with related parties, subject to certain permitted transactions.

Related parties are defined broadly and include a person who has a significant interest in a class of shares of the company; a director or senior officer; a spouse, common-law partner or child less than 18 years of age, of a person with a significant interest or of a director or senior officer; an entity controlled by either a person with a significant interest or a director or senior officer; an entity in which a person who controls the company has a substantial investment; a entity in which the spouse, common-law partner or child less than 18 years of age of a person who controls the company has a substantial investment, or a person designated by Superintendent as a related party.

Directors and officers are also required to disclose specified interests in material contracts or proposed material contracts with the company.

Directors with a conflict of interest must not be present at any meeting where the contract is under consideration.

Allowable Transactions

A company may enter into the following related party transactions:

- where the value of the transaction is nominal or immaterial to the company when measured against criteria established by the conduct review committee and approved by the Superintendent;
- loans or guarantees fully secured by securities of or guaranteed by the Government of Canada or the government of a province or loans made on the security of a mortgage of the principal residence of that related party;
- deposits by the company with a financial institution that is a direct clearer or member of a clearing group under the Canadian Payments Association and the deposit is made for clearing purposes;
- borrowing money from, taking deposits from, or issuing of debt obligations to a related party of the company;
- purchase or acquisition of securities guaranteed by the Government of Canada or the government of a province and the purchase or acquisition of goods for use in the ordinary course of business;
- purchase or acquisition of assets fully secured by securities of the Government of Canada or the government of a province;
- sale of assets of the company to a related party where the consideration for the assets is fully paid in money and there is an active market for those assets;
- lease of assets by a company from a related party for use in the ordinary course of business;
- written contract for the purchase of services used in the ordinary course of business;
- provision of services (other than loans or guarantees) normally offered to the public by the company in the ordinary course of business;
- written contract providing for the networking of services and referrals;
- written contract for pension or benefit plans and their administration as incidental to the directorships or employment of officers or employees of the company; and
- provision of management, advisory, accounting, information processing or other services in relation to the business of a related party.

All of these permitted related party transactions must be entered into on market terms and conditions except for:

- loans (other than margin loans) to full-time senior officers not exceeding the greater of twice the annual salary and $100,000 that may be made on terms and conditions more favourable than market terms and conditions, if the terms and conditions have been approved by the Conduct Review Committee;
- financial services, other than loans and guarantees to senior officers, that may be made on preferred terms and conditions provided those financial services are offered to employees of the company on those

favourable terms and condition and the Conduct Review Committee has approved the practice of making these financial services available on those favourable terms and conditions to senior officers..

Board approval is required (approval of two thirds of directors at meeting) to make certain permitted transactions with related parties that would exceed in the aggregate two percent of the regulatory capital of the company. A company is restricted from entering into permitted transactions with directors and senior officers, if the aggregate amount or value of the transactions would exceed 50 percent of the regulatory capital of the company.

Reporting and Audit

Required Reports

Annually, a company must prepare and place before its shareholders a comparative financial statement, including the report of the auditor, and any other required information. The financial statement must contain with respect to each financial year to which it relates, a balance sheet, a statement of income, a statement of change of financial position and a statement of change in shareholders' equity.

Public accountability statement:

Companies with equity of $1 billion or more are required to publish annually public accountability statements describing the contribution of the company and its prescribed subsidiaries to the Canadian economy and society. The statement must contain amongst other things, detailed examples of the company's goals in the area of community development and of its participation in such activities, information about the company's charitable and philanthropic activities, an overview of initiatives undertaken to improve access to financial services for low-income individuals, senior citizens, and disabled persons, a list of facilities that were opened and closed, and the total number of employees in each province.

Scope of Financial Statements

A company must include in its annual financial statements a list of subsidiaries of the company including the name and head office address of the subsidiary, the book value of shares of the subsidiary beneficially owned by the company and the percentage of voting rights attached to those shares.

A company must take all steps necessary to ensure that its auditor is appointed auditor of its subsidiaries.

A company must keep at its head office a copy of the current financial statements of each subsidiary of the company.

Powers and Duties of Auditors

The auditor is responsible for making an examination and reporting on the annual statement and other financial statements under the Act that must be placed before shareholders.

The auditor has the right to request information from present and former directors, officers and employees and they must permit access to records and provide information to the auditor.

The auditor is entitled to receive notice of every meeting of the audit committee and conduct review committee and to attend and be heard. A member of the audit committee may request the auditor attend every meeting of the audit committee. The auditor may cal a meeting of the audit committee.

The auditor is required to make a report to chief executive officer and chief financial officer of any transactions that have come to the auditor's attention that may affect the well-being of the association. The report must be submitted to the CEO and the CFO and presented and consider by the board at the first meeting after the receipt of the report.

A director of officer must notify the audit committee and the auditor of any material misstatement or error in the financial statement that they become aware of and the auditor must notify the directors if he or she becomes aware of a material misstatement in the financial statements of the company. The directors are required to prepare and distribute a revised annual financial statement in these circumstances.

Audit Committees

Composition

The audit committee is composed of at least three directors, the majority of whom are unaffiliated directors and none of whom may be an officer or employee of the company or subsidiary of the company.

Powers and Duties

The audit committee is responsible for

- reviewing the annual statement before it is approved by directors;
- meeting with the auditor to discuss statements and returns;
- reviewing such returns of the company as may be specified by the Superintendent;
- requiring the management of the company to implement and maintain appropriate internal control procedures; reviewing, evaluating, and approving such procedures and meeting with the chief internal auditor and management to discuss the effectiveness of internal control procedures;
- reviewing investments and transactions that could adversely affect the well-being of the company that the auditor or any officer of the company may bring to the attention of the committee.

Removal/ Resignation of Auditor

The shareholders of a company may by ordinary resolution at a special meeting revoke the appointment of an auditor. The Superintendent may at any time revoke the appointment of an auditor.

An auditor who resigns or receives notice of a meeting of shareholders called for the purpose of removing the auditor or appointing another person as auditor shall submit to the Superintendent and the company a written statement giving the reasons for his or her resignation or why he or she opposes the proposed action.

Other Provisions

The Superintendent may require that the auditor report to the Superintendent on the extent of the auditor's procedures in the examination of the annual statement and may require that the auditor enlarge or extend the scope of his or her examination or direct that a particular procedure be performed in a particular case.

The Superintendent may direct that a special audit of a company be made and may appoint an accountant or firm of accountants to undertake this special audit; the expenses of such an audit are borne by the company.

Regulatory Powers

Role of Minister and Officials

The Minister is responsible for issuing letters patent incorporating a company, letters patent continuing a body corporate as a company under the Act, and letters patent dissolving a company. The Minister is responsible for approving fundamental changes (for example, amalgamations and sale of all or substantially all of the assets of a company). The Minister is also involved in approving changes of ownership (involving significant acquisitions), specified types of investments and specified activities that a company may engage in. There is a provision in the Act allowing the Minister to delegate any of his duties to the Minister of State appointed to assist the Minister.

The Superintendent is responsible for the day-to-day supervision and regulation of companies and for determining whether or not they are in sound financial condition and in compliance with the Act. .

Regulatory Framework

Regulatory Organization

The Office of the Superintendent of Financial Institutions is responsible for the regulation of federal financial institutions, including trust and loan companies. The Minister of Finance is responsible for this Office.

Inspection/ Examination

A company must provide the Superintendent with such information, at such times and in such form as the Superintendent may require.

A company must prepare an annual statement containing a balance sheet as at the end of the year, a statement of income, a statement of change of financial position and a statement of shareholder's equity showing such information and particulars as presents fairly the financial position of the company at year end and the results of the operations and changes in the financial position of the company. The auditor must make a report in writing on this annual statement. The report must indicate that the annual statement presents fairly the financial condition of the company.

The Superintendent, may from time to time, but at least annually, make an examination of each a company to determine whether the company is complying with the Act and that the company is in sound financial condition. After each examination the Superintendent must report to the Minister.

Other Regulatory Duties

None specified

Regulatory Powers

The range of regulatory powers include:

- ability of Minister or Superintendent, in granting any approval or making any order, to impose terms and conditions or to require undertakings;
- "prudential agreements" that the Superintendent may enter into with a company for the purpose of implementing a measure to improve the company's safety and soundness;
- directions of compliance made by the Superintendent to a company or person to cease or refrain from committing an act that is unsafe or unsound, or from pursuing a course of conduct that is an unsafe or unsound practice and to perform such acts as are in the opinion of the Superintendent necessary to remedy the situation;

- application to court by the Minister or the Superintendent for an order to comply with a term or condition relating to an approval or to comply with an undertaking
- application to court by the Superintendent for an order to comply with a prudential agreement or a direction of compliance;
- where a company is subject to conditions or limitations on its operations, a Superintendent's direction of compliance or an order by the Superintendent to increase its capital or liquidity, the Superintendent may disqualify a person from being elected or appointed as director or from being appointed as a senior officer or remove a person from the office of director on the basis that the person's competence, business record, experience, conduct or character makes that person unsuitable to hold that position;
- removal by the Superintendent of a person from office as a director or senior officer of a company if the Superintendent is of the opinion that the person is not suitable to hold that office on the basis of the competence , business record, experience, conduct or character of the person or because the person has contravened or has contributed to the contravention of the Act or regulations or specified regulatory measures.
- power of the Superintendent to take control of the assets of a company or to take control of a company where the company has failed or will be unable to pay its liabilities; a state of affairs exists that may be materially prejudicial to the interest of depositors, creditors or beneficiaries of any trust under administration; the assets are not sufficient to give adequate protection to the depositors or creditors; the assets are unsatisfactorily accounted for; the regulatory capital has reached a level or is eroding in a manner that may be detrimental to its depositors or creditors; the company has failed to comply with an order of the Superintendent to increase its capital; the company's deposit insurance has been terminated by CDIC; or any other state of affairs exists that may be materially prejudicial to the interest of the depositors, creditors or beneficiaries of any trust under administration, including where proceedings under a law relating to bankruptcy or insolvency have been commenced in Canada or elsewhere in respect of the holding body corporate of the company;
- power of the Superintendent, where control was taken of a company, to request the Attorney General to apply for a winding-up order under the *Winding-up and Restructuring Act*.

The Minister has the power to direct that a person dispose of that person's shares if that person has contravened certain provisions in the Act relating to ownership.

The Minister has the power to freeze a company's assets if the company fails to comply with the public holding (ownership) requirement.

Offences and Penalties

Types of Offenses

Any person who, without reasonable cause, contravenes the Act or regulations is guilty of an offence. A director, officer or auditor who, without reasonable cause, fails to provide information related to the condition or affairs of a company is guilty of an offence.

Admin Penalties

There is an administrative monetary penalty regime set out in sections 24 to 35 of the Office of the Superintendent of Financial Institutions Act.

Criminal Penalties

Any person found guilty of an offence is

- in the case of a natural person, liable on summary conviction to a fine of not more than $100,000 or to imprisonment for a term of not more than 12 months or to both or on conviction on indictment to a fine of not more than $500,000 or to imprisonment for a term of not more than five years or to both;
- in the case of an entity, liable on summary conviction, to a fine of not more than $500,000 or on conviction on indictment, to a fine of not more than $5 million.

If the court is satisfied that a person convicted acquired monetary benefits, it may order the convicted person to pay an additional fine in the amount equal to these monetary benefits.

Recourse

Right to Hearing

Where the Superintendent intends to disqualify a person from being appointed or elected as a director or appointed as a senior officer, or to remove a director or senior officer from office, the Superintendent must give 15 days notice to that person to enable the person to make representations to the Superintendent.

Where the Minister does not intend to approve an application for an acquisition of a significant interest in any class of shares of a company, the Minister must notify the applicant of the right to make representations and provide the applicant with a reasonable opportunity within 30 days after the date of notice to make representations. Where the Superintendent intends to take control of the assets of a company for more than 16 days or to take control of a company, the Superintendent must give notice to the company of the proposed action and provide the company with an opportunity to make written representations within the time specified in the notice, not exceeding 10 days of receipt of the notice.

Where the Minister intends to order that a person dispose of that person's shares (on account of a breach of specified ownership provisions), the Minister must give the person and the company a reasonable opportunity to make representations.

Appeals Structure and Process

A director or senior officer removed from office by the Superintendent may within 30 days after receipt of notice of the removal order appeal the matter to the Federal Court.

Where the Minister orders that a person dispose of the person's shares that person may appeal to the Federal Court and the Court may dismiss the appeal, set aside the direction or decision, or send it back for redetermination.

Any decision or order of a court under the Act may be appealed to the court of appeal.

JURISDICTION – ALBERTA

Regulatory Approach

Activity or Entity Deposit and trust activities are regulated and only registered entities are permitted to undertake these activities.

Nature of Approach All trust corporations and loan corporations are subject to the same general level of regulation.

Corporate Framework

Incorporation

Method of Incorporation Incorporation is through letters patent – the Lieutenant Governor in Council may, on the recommendation of the Minister incorporate a loan corporation or a trust corporation.

Incorporation Requirements The Lieutenant Governor in Council shall not issue letters patent to incorporate a loan or trust corporation unless satisfied that

- it is in the public interest;
- the proposed management is fit, in character and competence;
- the capital structure and rights, privileges, restrictions and conditions on shares are acceptable;
- each person who will hold beneficially 10% or more of any class of shares can demonstrate adequate financial resources and is fit as to character to hold those shares;
- each proposed director is fit, in character and competence;
- the depositors will be adequately protected;
- the proposed plan of operations is feasible; and
- the corporation intends to offer to the public the services set out in its application for letters patent.

Incorporation Restrictions Letters patent will not be issued if the name of the corporation does not meet the requirements of the legislation. The name must include the term "trust" or "fiducie" or "loan" or "prêt" together with "corporation", "company", "compagnie", "limited","limitée", or "société".

Significant Changes

Types of Changes Types of significant changes that a loan or trust corporation can make include:

Amalgamation –

- two or more provincial corporations may amalgamate and continue as one provincial corporation;
- one or more provincial corporations, may with the approval of the Minister, amalgamate with one or more extraprovincial corporations and

continue as one provincial corporation;

- with the approval of the Minister one or more provincial corporations may under the laws of another jurisdiction, amalgamate with one or more extraprovincial corporations to continue as one extraprovincial corporation; and
- with the approval of the Minister a body corporate that is not a provincial corporation may amalgamate with a provincial corporation and become a provincial corporation.

Purchase or sale of assets – a provincial corporation may sell all or substantially all of its assets to a corporation incorporated in Canada provided the purchasing corporation assumes all or substantially all the liabilities of the provincial corporation; and vice a versa.

Purchase of Shares for amalgamation or purchase of assets – a provincial corporation may, for the purpose of amalgamating or acquiring the assets of another corporation, purchase voting shares in the corporation equal to not less than 67% of the voting rights.

Continuance in another jurisdiction – a provincial corporation may, if approved by the shareholders and the Minister, on the basis that it will not adversely affect depositors, shareholders or creditors, or a person to whom the provincial corporation acts in a fiduciary capacity, continue into another jurisdiction as if it had been incorporated in that jurisdiction.

Arrangement – a provincial corporation, a security holder or creditor may apply to court for an order approving an arrangement in respect of a corporation for the division of the business carried on by the provincial corporation and an exchange of securities held by security holders for property, money or securities of the corporation.

Requirements Related to Significant Changes

Ministerial approval is required for the amalgamation, by agreement or purchase of voting shares, of a provincial corporation with any other type of corporation(s) other than another provincial corporation. Shareholder approval is required for an amalgamation, by way or agreement or acquisition of shares, or a sale or purchase of assets.

The Minister will refuse to approve an amalgamation if he is not satisfied as to the same factors that he or she takes into consideration in approving an incorporation. The Minister will refuse the sale or purchase of assets unless it is in the public interest and the proposed plan of operations for the purchasing corporation is feasible. Where the amalgamating or purchasing corporation is a loan corporation, adequate provisions must be made with respect to protecting the persons for whom the trust corporation acted in a fiduciary capacity or the Minister will not approve the arrangement. Where the amalgamating or purchasing corporation is not a loan or trust company, special approval is required under which the Minister shall specify which provisions of Part 12 of the Act relating to fundamental changes are applicable.

Shareholders and creditors must vote in favour of an arrangement.

Dissolution

Dissolution Requirements

A provincial corporation that has no assets and no liabilities, if authorized by special resolution of its shareholders, may apply for letters patent dissolving the corporation. On the recommendation of the Minister, the Lieutenant

Governor in Council will issue the letters patent dissolving the corporation.

Voluntary dissolution and liquidation may be initiated by the directors or a shareholder at an annual meeting of shareholders. Where authorized by special resolution of its shareholder, the corporation may apply for letters patent dissolving the corporation. If the Minister is satisfied that the circumstances warrant the voluntary dissolution and liquidation, the Minister will issue a certificate of intent to dissolve. The corporation must cease to undertake business and take actions to dissolve the corporation, including making arrangements to transfer its trust business. If satisfied that the circumstances warrant, and all required action has been taken, the Minister may recommend that the Lieutenant Governor in Council issue letters patent dissolving the corporation. At any time, during the liquidation, any person may apply to the court for an order of supervision respecting the corporation and if the court makes such an order may also appoint a person as liquidator of the corporation.

A person may apply to the Minister, or court, as appropriate for an order to revive a dissolved corporation and the corporation may be revived for a specified period of time to carry out specified acts.

Ownership

Ownership Requirements None other than a requirement to consider financial resources and fitness of owners at the time of incorporation, registration or significant share transactions.

Ownership Restrictions None, other than a requirement to approve transfers exceeding 10% of the voting rights of the corporation.

Corporate Governance

Unaffiliated Directors At least one-third of directors of a provincial corporation must be unaffiliated directors. Not more than one-third of directors of a provincial corporation may be persons who are currently, or within the last two years have been, remunerated officers or employees of the corporation or any of its affiliates.

Board Committees The directors of a provincial corporation must appoint from their number an audit committee, a conduct review committee, and an investment committee. Each committee must have at least three members and at least two-thirds of the members of the audit and conduct review committees must be unaffiliated directors.

The shareholders may by special resolution authorize the directors to delegate any of their powers to an executive committee composed of not less than three directors appointed by the directors from their number. However no executive committee has the authority to

- submit to the shareholders any question or matter requiring the approval of the shareholders;
- fill a vacancy among directors or in office of auditor;
- issues securities, or purchase or redeem securities except as authorized by the directors;
- declare dividends;
- authorize a commission on the sale of shares;

- approve a management proxy circular;
- approve financial statements;
- adopt, amend or repeal bylaws;
- approve related party transaction review and approval procedures and investment policy and procedures.

Standard of Care for Directors and Officers

A director or officer must act honestly and in good faith and with a view to the best interests of the corporation and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

In determining whether a particular transaction or course of action is in the best interests of the corporation, a director must have due regard to the interests of depositors, shareholders and persons for who the corporation acts in a fiduciary capacity. A director appointed by a particular class of shareholders may give special but not exclusive consideration to them.

The directors of the corporation are responsible for the general management of the business and the affairs of the corporation.

Directors Qualifications

At least three-quarters of directors of a provincial corporation must be Alberta residents.

A director of a provincial corporation must be an adult, individual.

An individual is not qualified to be a director if the individual:

- is bankrupt;
- is a director of a corporation that is not affiliated with the provincial corporation of which the individual wishes to become a director;
- in the last five years, has been convicted of an indictable offence of a kind that is related to the qualifications and functions of a corporate director or an offence under the Act
- is a dependent adult under the *Dependent Adults Ac*, is a formal patient under the *Mental Health Act*; or has been found to be of unsound mind by a court elsewhere than in Alberta;
- is disqualified by or fails to meet any qualification requirements in the corporation's bylaws.

Resignation/ Removal of Directors

The shareholders of a provincial corporation may by ordinary resolution at an annual or special general meeting order the removal of a director from office. Where the holders of a class of shares have the exclusive right to elect one or more directors, a director so elected may only be removed by resolution at a meeting of shareholders of that class.

A director who resigns, receives notice of a meeting called for the purpose of removing the director from office or other meeting where another individual is to be elected to fill a vacancy whether created by resignation, removal or expiration of a director's term ***may submit*** a written statement to the corporation giving reasons for the director's resignation or reasons why the director opposes any proposed action or resolution as the case may be.

The Director ***must submit*** a statement where the director resigns due to a disagreement with an action or omission of the board of directors or the management that the director knows or believes constitutes a contravention of the Act, *Criminal Code*, the *Securities Act* or other comparable legislation or there has or will be a material change in the circumstances of the corporation.

The corporation must send this statement to all the other directors and to all shareholders unless the directors consider that there are reasonable grounds that such action could materially and adversely affect the financial viability of the corporation.

When a director resigns the director must also give notice to the Minister and provide the Minister with the copy of a their written statement if any.

Licensing of Domestic Entities

Licensing Requirements

A corporation must apply for registration in order to begin to carry on business. A corporation may apply to register as a trust corporation or a loan corporation. A registered corporation may subsequently apply to change its registration from a loan to a trust and from a trust to a loan corporation.

Licensing Approval

An application for registration from a provincial corporation must be accompanied by

- a consent in writing authorizing the Minister to conduct examinations at the head office of the corporation or any of its subsidiaries wherever located; and
- a written undertaking that the subsidiaries of the corporation will provide to the Minister any information that the Minister requires in the administration of the Act.

The Minister will refuse to register a corporation unless it has the required paid up capital:

- in the case of a trust only trust corporation that is not wholly owned by a financial institution the greater of $2million or a greater amount determined by the Minister taking into account the nature of the business the corporation plans to undertake, the expected volume of its business and any restrictions on its business;
- in the case of a trust only trust corporation that is wholly owned by a financial institution, an amount determined by the Minister taking into account the nature of the business the corporation plans to undertake, the expected volume of its business and any restrictions on its business;
- in the case of a provincial loan corporation the greater of $3 million or other amount required by the Minister taking into account the nature of the business the corporation plans to undertake, the expected volume of its business and any restrictions on its business;
- in the case of a provincial trust corporation $5 million or other amount required by the Minister taking into account the nature of the business the corporation plans to undertake, the expected volume of its business and any restrictions on its business;

A provincial loan or trust corporation must also have a capital base that is adequate and that is at least equal to the above amounts.

The Minister must not register a provincial corporation unless satisfied that

- it is in the public interest;
- the management is fit, in character and competence;
- the capital structure and rights, privileges, restrictions and conditions on shares are acceptable;
- each person who will hold beneficially 10% or more of any class of shares immediately after registration can demonstrate adequate financial resources and is fit as to character to hold those shares;
- each director is fit, in character and competence;
- the depositors will be adequately protected;
- the proposed plan of operations is feasible; and
- the corporation intends to offer to the public the services set out in its application for registration and has the capability to provide those services.

Regulation of Extra-provincial Entities

Regulatory Approach

A corporation incorporated under the laws of Canada or another province must apply for registration as a trust or loan corporation in order to carry on business in Alberta.

An extraprovincial corporation may apply to register as a trust corporation or a loan corporation. A registered corporation may subsequently apply to change its registration from a loan to a trust and from a trust to a loan corporation.

Restrictions and Limitations

An application for registration from an extraprovincial corporation must be accompanied by

- a written authorization allowing the Minister to conduct examinations at the head office of the corporation or any of its subsidiaries and branches wherever located; and
- a written undertaking from the officers of the corporation that the corporation and its subsidiaries will provide to the Minister any information that the Minister is entitled to under the Act and that the corporation and its subsidiaries will comply with any terms, conditions or restrictions imposed by registration.

The application must also be accompanied by a power of attorney from the corporation naming an agent resident in Alberta for the purposes of delivery.

Trust only trust corporations must meet the capital requirements and extraprovincial corporations in the deposit-taking business must have deposit insurance provided by the Canada Deposit Insurance Corporation or by a prescribed public agency, Extraprovincial corporations must have the capacity, power and authority under the incorporating jurisdiction's law to engage in the proposed business.

Where the authority to carry on business of a registered corporation is revoked or suspended under the laws of Canada or another province or territory, the Minister will revoke or suspend the registration of the extraprovincial corporation in Alberta. The Minister may exercise enforcement powers in respect of an extraprovincial corporation relating to market conduct activities or at the request of the incorporating jurisdiction.

Examination

The Minister may order a special examination of a extraprovincial corporation only in respect of market conduct activities of the extraprovincial corporation.

The Minister has the power to demand information from an extraprovincial corporation, but will only use this power where the subject matter of the examination or inquiry is a market conduct activity.

The Minister may only issue a cease and desist order in respect of the market conduct activities of an extraprovincial corporation unless requested, by the government in which the corporation is incorporated, to make an order respecting the corporation. Likewise, terms and conditions may be placed on registration in respect of market conduct activities or at the request of the incorporating jurisdiction.

Reporting and Records

Extraprovincial corporations must provide annual returns to the Minister. The annual return must include the financial statements and auditor's report for the preceding fiscal year. Where the extraprovincial corporation is a subsidiary the Minister may require the holding company to forward to the Minister the holding company's financial statements, and separate audited financial statements in respect of any of the holding company's subsidiaries, and may direct the basis on which those financial statements are to be prepared and the time period to which they are to relate.

An extraprovincial corporation must also send to the Minister a copy of any order by a court or other person in the nature of a direction and notice of the corporation being subject to a voluntary compliance type arrangement, a copy of any change to its incorporating documents, registration status, and notice of enforcement actions taken elsewhere in Canada.

Operations

Trust and Deposit Business

On registration, a trust corporation may request that its registration restrict it from carrying on deposit-taking business. The application for registration of a trust corporation must set out the classes of service in relation to which the trust corporation intends to act in a fiduciary capacity.

No person other than a registered corporation, including a trust only corporation, shall engage in deposit-taking business unless authorized by statute (e.g., a bank).

No body corporate other than a registered corporation may carry on the business of offering its services to the public as accepting or executing the office of executor, administrator or trustee or guardian of a minor's estate or the estate of a mentally incompetent person. (Exceptions include a law corporation, an unregistered corporation in respect of a grant of probate or administration, or any prescribed body.)

Business Powers & Restrictions

The corporation has the rights, powers and privileges of an individual and the capacity to carry on its business in any jurisdiction outside Alberta to the extent permitted by the laws of that jurisdiction.

A registered trust corporation may engage in fiduciary services and provisions or real property brokerage services and acquire, hold maintain, develop, repair, serve, lease and dispose of or otherwise deal with real property.

A registered corporation may only engage in financial leasing as is permitted to a financial leasing corporation under the regulations.

A corporation must not carry on any business it is prohibited from carrying on under the Act and must not exercise its powers in a manner contrary to the legislation.

A registered corporation shall not engage in, or carry on business, other than business generally appertaining to the business of providing financial services.

A registered loan corporation is not permitted to carry on the business of a receiver, liquidator, or sequestrator or custodian of property.

A registered corporation is ***not*** permitted to carry on

- any securities activities in respect of which filing a prospectus or registration is required under the *Securities Act*, other than as a principal;
- business as an insurer or business as an insurance agent or adjuster, though, a corporation may hold a restricted agent's certificate of authority under the *Insurance Act* and is authorized to act as an insurance agent to the extent permitted by the certificate;
- business as an information management corporation except in relation to the main business of a loan or trust corporation.

Restrictions on Offices and Branching

Every provincial corporation must have a head office in Alberta.

Borrowing Capacity

A provincial corporation may only borrow money by way of the issue of subordinated notes.

A provincial corporation may pledge its own assets as security for a debt obligation provided the debt obligation is issued to meet short-term liquidity requirements and the total debt obligation of the corporation in relation to pledged assets will not exceed 50% of corporation's capital base.

Capital & Liquidity

Approach to Capital Adequacy

Minimum paid up capital on registration to do business and a leverage approach to ongoing capital adequacy requirements (note: there are no deposit-taking trust corporations incorporated in Alberta). The regulation-making power provides for adoption of a risk-based approach to capital adequacy by regulation.

Capital Requirements

A provincial corporation must maintain a capital base that meets the leverage ratio requirements, and any other requirements as to the corporation's capital adequacy as set out in the regulations.

Restrictions on Capital

A provincial corporation may not acquire or redeem its own shares or pay a dividend on shares if after the payment the corporation would be unable to pay its liabilities as they come due, the realizable value of the corporation's assets would be less than the aggregate of its liabilities and stated capital account and the payment would cause the corporation to be in contravention of the legislation.

Liquidity Requirements

A provincial corporation must at all times have and keep available in the prescribed manner and amounts the required securities in cash and securities and cash for liquidity purposes.

Investment & Lending

Approach to Investment and Lending

Prudent portfolio approach – a corporation must adhere to prudent investment standards in making investment decisions and managing its total investments.

Prudent investment standards are those that a reasonably prudent person would apply to investments made on behalf of another person with whom there exists a fiduciary relationship; just because a corporation is in compliance with the specific provisions of the legislation does not mean that it is in compliance with this requirement.

The board must, on the recommendation of its investment committee, establish written investment procedures to ensure prudent standards are applied and review these standards at least twice a year.

Investment and Lending Limits and Restrictions

A provincial corporation may make the following loans:

- Personal loans to individuals in up to an aggregate limit of the lesser of $100,000 and one-tenth of the provincial corporation's assets;
- Commercial loans up to an aggregate limit of 5% of the total assets of the corporation without Ministerial approval;
- Investment mortgage loans on improved real estate, and where the investment mortgage loan is a residential mortgage, the amount of indebtedness must not exceed 75 % of the market value unless the excess is guaranteed or insured. Where the mortgage is high-ratio and commercial it is counted as a commercial loan.

A provincial corporation may make the following investments:

- Acquisition of improved real estate for purpose of producing income or for own use up to an aggregate of 10% of the total assets of the corporation and the assets of all subsidiaries of the corporation, other than financial institutions; acquisition value of a single parcel must not exceed 1 % of total assets of the corporation or its subsidiary;
- Investments in shares is limited to 10% of assets (section 25, Regulation), other than in companies on the permitted list of downstream corporations, or shares counted as commercial loans, i.e., shares which are not widely distributed).

A provincial corporation shall not directly or indirectly make a loan to or other investments in a person or two or more connected persons in an amount greater than $500,000 or 1% of the provincial corporation's total assets.

Investment in Subsidiary/ Affiliates

A provincial corporation may not beneficially own more than 10% interest in a partnership, trust, fund or other unincorporated association or organization or 10% of the voting rights attached to shares of a corporation unless that entity or corporation falls within the list of permitted investments in entities and corporations in which a provincial corporation may own more than 10%. These include:

- with the approval of the Minister a trust or loan corporation
- a financial leasing corporation,
- a securities dealer;
- an insurance company;
- a real property brokerage corporation or a real property corporation;
- a factoring corporation;
- a mutual fund distribution corporation, registered as a mutual find dealer under the *Securities Act*;
- an investment counselling corporation, registered as such under the *Securities Act*
- a portfolio management corporation, registered as such under the *Securities Act;*
- a service corporation;
- an information management corporation;
- a bank; or
- prescribed body corporate.

The Minister may order the corporation to divest itself its beneficial ownership in a body corporate not permitted under the Act.

Related Party Transactions

Approach to Related Party Transactions

The restricted party rules do not apply to a trust only trust corporation, unless otherwise applied by regulation. (By regulation trust only trust corporations must have review procedures.)

General ban approach –

- no provincial corporation or its subsidiaries shall directly or indirectly engage in a transaction with a related party, enter into a guarantee on behalf of a restricted party or make an investment in securities of a restricted party; and
- no related party shall directly or indirectly engage in a transaction with a provincial corporation.

There is also a one year time limit, prohibiting the corporation or its subsidiary from entering into a transaction with a person who was a related party of that corporation or subsidiary during the past 12 months unless the transaction is authorized by the board of directors and is at fair market rate.

Where the auditor or a professional advisor of the corporation becomes aware of a contravention of a restricted party provision, the auditor must make the board aware and the advisor must make the auditor and board of aware of the contravention. The corporation must notify the auditor and the Minister about the contravention.

Any interested person or the Minister may apply to court for an order setting aside a prohibited restricted party transaction, guarantee or loan. The Minister may designate any person as a restricted party.

Allowable Transactions

The prohibition does not apply to the payment of remuneration to the auditor, directors (as approved by the shareholders), granting of loans to director, officers and spouses on the security of a residence provided the loan is at fair market value, make a personal loan to a officer, employee or spouse if the loan qualifies as an investment and is at fair market value, and the granting of director's indemnification.

Provided that the board of the corporation or its subsidiary has authorized the transaction, a corporation or its subsidiary may enter into the following transactions with a restricted party:

- a contract for management services with a related party if it is reasonable that credit union or subsidiary obtain these services and that consideration is at fair market value;
- a written lease of real estate or personal property at fair market rate and for a maximum term of five years for personal property and 20 years in the case of real estate and the terms of the lease are otherwise competitive and reasonable;
- a written contract for pension and benefit plans and for employees and officers of the credit union or subsidiaries;
- a written contract for purchase of other goods and services required by the corporation or subsidiaries in carrying out their affairs, provided there is appropriate documentation, it is at fair market rate and the contract does not exceed five years;
- acquire from or sell to a restricted party prescribed securities, other than securities issued by the restricted party and so long as the transaction is at fair market value;
- make a loan to or guarantee the obligations of an entity in which the corporation beneficially owns shares, provided the loan or guarantee is at fair market value and meets prescribed conditions.

The corporation or its subsidiaries do not need board authorization, unless the bylaws require it, to enter into:

- a transaction that involves minor or general expenditures of the corporation (the conduct review committee will set limits and develop criteria as to what constitutes a minor or general expenditure);
- a transaction for sale of goods or services that are normally sold or provided to the public by the corporation or subsidiary in the ordinary course of its business;
- a transaction where the corporation takes a deposit from the restricted party other than a financial institution so long as deposit made at fair market value
- a prescribed transaction that is permitted if there is board authorization.

Limited exceptions are also specified for transactions with director, officers and employees.

Despite these exceptions, the corporation or its subsidiary may not enter into a permitted transaction, guarantee or investment if the aggregate of all permitted transactions, guarantees and investments exceeds 10% of the corporation's total assets. The limit is 2% of assets with respect to deposits received from it by financial institutions.

A corporation may apply to the Minister for permission to engage in a prohibited restricted party transaction. The Minister may allow the transaction if it is satisfied it is beneficial to the corporation and will not prejudice the interests of the depositors or persons for whom the corporation acts in a fiduciary capacity.

A corporation may not enter into permitted restricted using funds held by it as fiduciary.

A provincial corporation must establish written review and approval procedures to be followed by the corporation to ensure compliance with restricted party rules.

A director or officer of a corporation is required to make disclosure of related party and similar transactions to the corporation and the board of the corporation, and may not influence or vote on the transaction.

A restricted party who knows or has reason to believe that the party is a restricted party of the corporation and is about to enter into a transaction with the corporation must disclose their interest to the corporation.

Reporting and Audit

Required Reports

The directors of a provincial corporation must place before each annual general meeting of shareholders annual financial statements for the previous fiscal year, and include an auditor's report on the statements.

Scope of Financial Statements

Where required by generally accepted accounting principles, the financial statements will be prepared on a consolidated basis. Where a provincial corporation is a holding company or a subsidiary, separate financial statements and auditor's report on them will also be required in addition to the consolidated statements.

The Minister may prescribe additional accounting standards.

Powers and Duties of Auditors

The auditor of a provincial corporation is responsible for conducting an audit and examination of the corporation and the corporation's subsidiaries financial statements and making a report on them.

A shareholder may request that the auditor attend a general or special meeting to discuss the exercise of the auditor's duties and powers and the auditor is required to attend unless the audit committee determines that the shareholder's issue relates to a personal grievance.

Where the auditor considers that there has been a change in circumstances that might reasonably be expected to materially and adversely affect the financial position of the corporation, the auditor must make a report to the audit committee and the Minister.

The auditor and internal auditor are entitled to receive notice of and attend the meetings of shareholders. The conduct review committee and audit committee must give reasonable notice of their meetings to the auditor. The auditor is entitled to attend and be heard at all meetings of the audit committee and may call a meeting of the audit committee.

The auditor is entitled to request and receive any information and explanations that are in the auditor's opinion required to allow the auditor to make his or her report.

Audit Committees

Composition

The audit committee must have at least three members and at least two-thirds of those members must be unaffiliated directors.

Powers and Duties

The audit committee is responsible for meeting twice a year to

- review any annual audited financial statements to be distributed to shareholders;
- the annual return of the corporation to be sent to the Minister;
- considering request from shareholders regarding the attendance of the auditor at a general or special general meeting to discuss the exercise of the auditor's duties and powers;
- all reports of the auditor respecting a change in the circumstances of the corporation;
- any reports as prescribed by regulation that the audit committee must review.

Removal/ Resignation of Auditor

The shareholders of a provincial corporation may by ordinary resolution remove an auditor from office, other than a court appointed auditor. The directors must forth with appoint a new auditor to fill the vacancy. A corporation must give immediate notice to the Minister of the appointment of an auditor or occurrence of a vacancy in the office of auditor.

Other Provisions

The Minister may require the application of other accounting principles, policies and practices instead of, or in addition to, generally accepted accounting principles.

Regulatory Powers

Role of Elected Officials

The Minister is responsible for making most regulatory decisions under the legislation; a key responsibility of the Lieutenant Governor in Council is the issuance of letters patent to incorporate and to dissolve a corporation.

Regulatory Framework

Regulatory Organization

The Minister is charged with the administration of the Act, but may delegate any power, duty or function imposed under the legislation to any employee under the Minister's administration or officer or employee of an agent of the crown.

Day to day administration of legislation is undertaken by the Superintendent of Financial Institutions as delegated by Minister

Inspection/ Examination

The Minister may examine any aspect of the business or affairs of a provincial corporation or its subsidiary to determine

- its condition and ability to meet its obligations;
- whether the corporation is following sound business practices;
- the procedures and standards of the management of the corporation;
- the standards of the credit union or subsidiary's management;

- whether the corporation is in compliance with the legislation.

The Minister may also appoint a person to undertake a special examination where the Minister consider an investigation is necessary in order to safeguard the interests of the corporation's creditors or persons for whom the corporation acts in a fiduciary capacity.

Regulatory Powers

The Minister has wide, scope and depth of regulatory powers, ranging from:

- ordering a person to provide information or documentation necessary for inquiring or facilitating an inquiry of the Minister.
- where the Minister believes that a person, other than a registered corporation, is carrying on business as a trust or loan company in contravention of the legislation, investigating and inquiring into, and examining the business and affairs of the person
- requiring an appraisal of a corporation's assets if the Minister believes the value placed on an real estate asset is too great, the amount secured by a mortgage is not sufficient security, or the market value of any investment is less than the amount show on the books.
- Issuing a cease and desist order or entering into voluntary compliance agreements with a provincial corporation, where the Minister considers that a corporation or other person is committing an act or pursuing a course of conduct that is in contravention of the Act, places the corporation in the position where it is carrying on business in an unsound manner, is in contravention of a voluntary compliance program, or constitutes a practice that might adversely affect depositors or persons for whom the corporation acts in a fiduciary capacity.
- suspending or revoking a corporation's registration, or imposing terms or conditions on it where a corporation denies the Minister access to information; the holding body of the corporation fails to forward its financial statements; a corporation contravenes an order of Minister, decision or review board, or order of the court; grounds exist for the possession and control of the corporation by the Minister; or, a corporation has not for a period of five years or more undertaken deposit or trust business.
- freezing assets pending an examination, where the Minister is about to revoke or suspend a registration, or where proceedings are about to be or have been instituted.

The Minister may also apply to the court for an order for compliance and may without a hearing place terms and conditions on a registration or take possession and control of a provincial corporation's assets for serious transgressions. Where the Minister takes possession and control of the assets of a corporation, the Minister shall manage the business and affairs of the corporation and may appoint one or persons to do this on his or her behalf. The Minister may relinquish control when satisfied that it is proper for the corporation to resume possession and control of its assets. If the Minister feels that further efforts to rehabilitate the corporation are futile, the Minister may apply to the court for an order to liquidate and dissolve the corporation.

The Minister or any interested party may apply to the court for an order for liquidation and dissolution and the court may grant such an order if satisfied that it is in the public interest to do so.

Offences and Penalties

Types of Offenses

Rather than a general offense provision for any contravention of the Act, there are selected offences subject to specified penalties.

Admin Penalties

Any corporation may be liable to a civil penalty imposed by the Minister for failure to submit their annual returns, periodic reports and financial statements as required under the Act.

Criminal Offences

The level of penalty depends on the offence.

A person convicted of the following offences is liable to a fine of up to $100,000 for the first offence and $200,000 for each subsequent conviction

- contravening an undertaking or voluntary compliance program,
- contravening a term or condition of registration,
- operating outside its capacity or operating without a registration to do prohibited business,
- misuse of shareholders' list
- not disclosing interest (directors),
- not cooperating with an examination
- prohibition on use of name, acting as a promoter, or making prohibited representations respecting solvency and guarantees.

A person who contravenes an order under the Act or fails to report to the Minister as required is liable to a fine up not more than $250 for each day during which the offence continues.

A person who misuses personal information is liable to a fine not greater than $100,000 or three times the profit made by the person as a result of the offence

A person who is found guilty of making false or deceptive statements is liable to a fine of $100,000 for the first offence and $200,000 for each subsequent conviction or imprisonment of up to two years of both fine and imprisonment.

Separate penalties, of up to $100,000 for the first offence and $200,000 for each subsequent conviction, are set for directors and officers who knowingly authorize, permit or acquiesce to an offence under the Act

Recourse

Right to Hearing

Where the Minister plans to make a cease and desist order, the Minister will advise the party about the order and outline a course of conduct to remedy the situation. If the Minister believes that the interests of the party could be adversely affected by a delay the Minister may make a temporary order which shall take immediate effect. A party that receives notice of the Minister's intention to make an order or is subject to a temporary order may, within 15 days, request a hearing before the Minister.

Appeals Structure and Process

A party aggrieved by specified significant decisions or actions of the Minister under the legislation is entitled to have the decision reviewed by a review board appointed by the Minister. The review board must consist of one person designated as Chair by the Minister and not fewer than two or more than four persons who must not be employed in Alberta public service.

The Minister must appoint the review board within 30 days of receiving the notice of objection from the party to the decision or action. The Minister must set a period not exceeding 90 days in which the review board will is to make the review and give its written decision. This period may be extended but only once and only by 45 days. The review board may confirm, rescind, or vary the decision that is the subject of the review.

A party may appeal a decision of the review board to court. A person may apply to the Minister for leave to appeal directly to the court and where granted the person is considered to have waived their right to a review.

Where a party is appealing a decision to the review board or the court as the case may be, the appeal does not operate as a stay of the decision. However, the review board or the court may grant a stay in respect of a decision. The Minister will not issue a certificate of dissolution if the decision to dissolve is under appeal.

JURISDICTION – ONTARIO

Regulatory Approach

In 2001, the Ontario government passed comprehensive amendments to its *Loan and Trust Corporations Act* to effectively remove the province from the incorporation and regulation of loan and trust corporations by July 1, 2004. Only federal loan or trust corporations will be permitted to operate in Ontario. The Superintendent of Financial Institutions will register and maintain a register or federal corporations, but reliance will be placed on the federal government for the prudential regulation of the corporation. The Superintendent will also retain power to investigate federal corporations for suspected contraventions of the legislation and for failure to provide requested information.

JURISDICTION – SASKATCHEWAN

Regulatory Approach

Activity or Entity

The focus of regulation is the entity engaged in trust and loan corporations. The legislation also regulates "financing corporations" which are entities that fall under the Act due to lending activities but, do not accept deposits.

Nature of Approach

The approach is to parallel the federal trust and loan company legislation in terms of general corporate powers and capacity and corporate governance by adopting provisions of the federal act by reference and applying them to Saskatchewan trust and loan corporations.

Corporate Framework

Incorporation

Method of Incorporation

One or more persons, being an individual or a body corporate, may incorporate a Saskatchewan loan or trust corporation under the *Business Corporations Act* by signing and delivering to the Director under that Act articles of incorporation.

Application must be made to the Corporations Branch to register a corporation; this includes a name search.

Incorporation Requirements

A person planning to incorporate a financing corporation must give one month's advance notice to the Superintendent of Financial Institutions of their intention to incorporate.

The Superintendent may require restrictions on the business of the loan or trust corporation to be included in its articles and any changes to the articles of a loan or trust corporation must be approved by the Superintendent. [Normally, any restrictions on the business of a corporation are set out as conditions in a corporation's license.]

Incorporation Restrictions

A person may not incorporate a Saskatchewan loan or trust corporation without the prior approval of the Superintendent of Financial Institutions.

The Superintendent must approve the name the corporation proposes to use but does not pre -approve incorporations. Once a corporation is incorporated it must apply to the Superintendent for licensing.

Significant Changes

Types of Changes

Under *The Business Corporations Act*, a Saskatchewan loan or trust corporation may amalgamate with, transfer all or substantially all of its assets to another body corporate or acquire all or substantially all of the assets of another body corporate.

Requirements Related to Significant Changes

Significant changes must be approved by special resolution of the shareholders of the corporation.

Additionally, a Saskatchewan loan or trust corporation must not without the written approval of the Superintendent:

- amalgamate with another body corporate;
- transfer or dispose of all or substantially all of its assets;
- acquire all or substantially all of the assets or all of the liabilities of another body corporate.

Dissolution

A Saskatchewan loan or trust corporation may be liquidated and dissolved pursuant to provisions of the *Business Corporations Act*.

Ownership

Ownership Requirements

No ownership requirements.

Ownership Restrictions

No shares of a Saskatchewan loan or trust corporation may be transferred or issued to a substantial shareholder of the corporation (holder of 10% or more of the voting shares of the corporation), or a person that who would become a substantial shareholder after the transfer or issue, without the approval of the Superintendent on the basis that the transfer or issue is not objectionable for any reason.

No shares of a Saskatchewan loan or trust corporation may be transferred or issued to a non-resident if the result would be that more than 10% of the shares of the corporation are held by non-residents.

Corporate Governance

Unaffiliated Directors

One-third of the directors of company must be unaffiliated directors.

[Adopted by reference from federal trust and loan company legislation.]

Board Committees

The directors of a company must

- establish an audit committee [see section on "Reporting and Audit";
- establish a conduct review committee responsible for establishing policies and procedures to address self dealing composed of at least three directors, none of which may be a officer involved in the day-to-day operations of the association or employee of the association or subsidiary of the association.;
- designate a committee to monitor conflict of interest procedures established by the board;
- designate a committee to monitor the procedures of the board established for providing disclosure of information to customers and dealing with complaints.

[Adopted by reference from federal trust and loan company legislation.]

Standard of Care for Directors and Officers

The directors and officers of a corporation are responsible for managing and supervising the business and affairs of the company.

Every director (and officer) must in carrying out his or her duties act honestly and in good faith with a view to the best interests of the corporation, and exercise the care, diligence and skill that a reasonably prudent person would exercise incomparable circumstances.

[Adopted by reference from federal trust and loan company legislation.]

Directors

The majority of directors of a Saskatchewan loan or trust corporation must

Qualifications

be Canadian residents; if no director is a resident of Saskatchewan, the corporation must appoint an attorney for service in the province (Saskatchewan *Business Corporations Act)*.

An individual is disqualified from being a director if the individual

- is less than eighteen years of age;
- is found to be of unsound mind,
- has the status of a bankrupt;
- is prohibited from exercising voting rights attached to shares of company;
- a person who is an agent, employee or Minister of the federal government or agent or employee of a foreign government.

[Adopted by reference from federal trust and loan company legislation.]

Resignation/ Removal of Directors

The shareholders of a corporation may, by ordinary resolution at a special meeting of the corporation, remove a director(s) from office. A director who resigns or receives notice of a meeting called for the purpose of removing him or her from office, or where another person is to be appointed to fill the office of the director because of resignation or removal, is entitled to submit to the corporation a written statement giving the reasons for the resignation or why they oppose the proposed action. The corporation must distribute such a statement to shareholders (Saskatchewan *Business Corporations Act)*.

Licensing of Domestic Entities

Licensing Requirements

No person may carry on the business of a trust or loan corporation without a license authorizing the person to carry on that business. An applicant for a license must be a body corporate.

Licensing Approval

The Superintendent may issue a license if, in the opinion of the Superintendent the applicant is suitable to be licensed and the proposed licensing is not for any reason objectionable. After an investigation, the Superintendent may refuse to issue a license, if in his or her opinion the applicant not ought to be licensed.

The Superintendent may refuse to issue a license if an applicant does not have the prescribed regulatory capital:

- for trust and loan corporations that will accept deposits, minimum capital for licensing is $5 million;
- for a trust corporation that does not accept deposits, minimum capital for licensing is $2 million;

At the time of licensing or any time thereafter, the Superintendent may impose terms and conditions on a license. A license continues indefinitely unless it is suspended or cancelled.

Regulation of Extra-provincial Entities

Regulatory Approach

Every body corporate operating in Saskatchewan as a loan or trust corporation or financing corporation must be licensed and is subject to the same licensing approvals and requirements as provincial corporations, including minimum capital requirements.

An extraprovincial corporation may carry on the same business and exercise the same powers as a Saskatchewan corporation unless it is restricted under the legislation of the jurisdiction in which it was incorporated. No extraprovincial corporation may carry on any business not allowed under the Saskatchewan legislation.

An extraprovincial corporation must immediately notify the Superintendent of the suspension, cancellation or amendment of its authority to do business in any other jurisdiction or the imposition of any conditions or terms on its authority to do business. This constitutes grounds for possible suspension or cancellation of the extraprovincial corporation's license in Saskatchewan.

Restrictions and Limitations

In the case of a body corporate not incorporated or continued under the laws of Saskatchewan, the Superintendent must be satisfied that the applicant is registered pursuant to an Act of Saskatchewan that requires registration of the applicant.

As well as a condition of licensing, or at any time after a license is issued, the Superintendent may require an applicant or extraprovincial corporation to

- consent to allowing the Superintendent to undertake audits, examinations and investigations that the Superintendent reasonably requires for the purposes of the Act at the head office or other branch of the corporation wherever located;
- a written undertaking from the appropriate officers of the corporation stating that the applicant or corporation will comply with the Act and any terms and conditions of its license and that it will provide the Superintendent with required information in a timely fashion;
- maintain in Saskatchewan any records or information that the Superintendent reasonably requires for the purposes of he Act.

As well, as a condition of obtaining a license, an extraprovincial corporation must produce evidence that it is authorized to engage in the activities of a loan or trust corporation in its home jurisdiction and at the time of its application it has the regulatory capital required under the legislation.

Examination

Extraprovincial corporations must allow the Superintendent to audit and inspect their operations and must provide required information.

Reporting and Records

Extraprovincial corporations must prepare and file reports as required by the Superintendent.

Operations

Trust and Deposit Business

The Act provides that a Saskatchewan trust corporation, in addition to its general powers listed below, may

- take, receive hold and administer estates and property;
- take and receive as trustee on any terms and for remuneration, deeds, wills, insurance policies, securities and property and guarantee the safekeeping, and accept and execute the administration of this property;
- accept the duty of and act in the winding up of estates, partnerships and

bodies corporate.

The Act also provides that a Saskatchewan loan corporation and a Saskatchewan trust corporation may accept deposits from any person whether the person can legally enter into contracts or not and pay interest on the principal and the pay the principal and interest on demand to the depositor. A corporation must not accept deposits in Canada unless it is a member of a designated compensation association.

Where it is a trust corporation, those deposits are deemed to be held in trust; and where it is a loan corporation, those deposits are debt.

Business Powers

A Saskatchewan trust or loan corporation has the capacity of a natural person and the rights, powers and privileges of a natural person.

A corporation has the capacity to carry on business throughout Canada, as permitted by the laws of that jurisdiction.

A corporation must not engage in any business other that the business of providing financial services. This includes the company acting as a trustee, financial agent, receiver, liquidator or sequestrator; providing investment counselling and portfolio management services, issuing and operating payment, credit and charge cards.

A corporation may also

- act as an agent for vendors, purchasers, mortgagors, mortgagees, lessors or lessees of real property and provide consulting or appraisal services in respect of real property;
- hold, manage and otherwise deal with real property;
- provide information processing services in Canada that the company has developed for its own use outside of Canada, or with the prior written approval of the Minister, in Canada, engage in
- collecting, manipulating and transmitting information that is primarily financial or economic in nature and that relates to the business of a regulated entity;
- providing advisory and other services in the design and development, implementation and marketing of information management systems and computer software; and
- designing, developing, manufacturing or selling, as an ancillary activity, computer equipment integral to the provision of information services related to the business of financial institutions;
- with the approval of the Minister, develop, design, hold, manufacture and sell data transmission services, information sites, communication devices or information platforms or portals to provide information that this primarily financial or economic in nature and that relates to the business of a regulated entity;
- promote merchandise and services to the holders of any payment, credit or charge card issued by the company;
- engage in the sale of tickets, including lottery tickets, on a non-profit service basis; urban transit tickets; government lottery tickets;
- act as custodian of property; and

- engage in prescribed, specialized business management or advisory services.

There is a specific provision allowing a corporation to network.

[Adopted by reference from federal trust and loan company legislation.]

Restrictions on Business Powers

There is a general prohibition on a Saskatchewan corporation carrying on any business or exercising any power that it is restricted from carrying on under the legislation.

A corporation must not

- make guarantees unless the guarantee is for a fixed sum and the person for whom the association has entered into the guarantee has a unqualified obligation to reimburse the corporation for the full amount;
- except as provided under the legislation, deal in goods or engage in any trade or business;
- undertake the business of insurance expect as permitted under the legislation and must not act, in Canada, as an agent for any person in the business of insurance or lease or provide space in its offices in Canada to any person engaged in the placing of insurance;
- unless approved by the Superintendent, be a general partner in a limited partnership or a partner in a general partnership; and
- except as specifically provided under the legislation, deal in securities.

[Adopted by reference from federal trust and loan company legislation.]

Borrowing Capacity

A corporation must not issue subordinated debt unless the debt is fully paid in money, or with the approval of the Superintendent, in property.

Subordinated debt is deemed not to be a deposit.

[Adopted by reference from federal trust and loan company legislation.]

Restrictions on Offices & Branching

No restrictions.

Capital & Liquidity

Approach to Capital Adequacy

Minimum paid up regulatory capital required at licensing and ongoing regulatory capital adequacy requirements based on risk weighted approach.

Capital Requirements

A corporation must at all times, in relation to its operations, maintain adequate capital and must comply with any regulations in relation to what constitutes adequate capital. Despite, compliance with any regulations, the Superintendent may by order direct that a company increase its capital.

A trust or loan corporation that accepts deposits must maintain regulatory capital of at least $5 million. A trust corporation that does not accept deposits must maintain regulatory capital of $2 million. Every trust and loan corporation except for a federally incorporated or continued loan corporation must file on an annual basis a statutory declaration that they have maintained the required regulatory capital throughout the year.

The minimum regulatory capital for a financing corporation is $500,000. Financing corporations first licensed after August 31/99 must file a statutory declaration.

Restrictions on Capital

Regulatory capital is capital as defined in federal legislation.

Liquidity Requirements

A corporation must at all times, in relation to its operations, maintain adequate liquidity and must comply with any regulations in relation to what constitutes adequate liquidity. Despite, compliance with any regulations, the Superintendent may by order direct that a corporation provide additional liquidity in such forms and such amounts as the Superintendent may require.

Investment & Lending

Approach to Investment and Lending

Saskatchewan loan and trust corporations are subject to a prudent portfolio approach to investment and lending. The directors of a corporation are required to establish and adhere to investment and lending policies, standards and procedures that a reasonable person would apply in respect of a portfolio of investments and loans to avoid undue risk of loss and obtain a reasonable return.

[Adopted by reference from federal trust and loan company legislation.]

Investment and Lending Limits and Restrictions

The prudent portfolio approach is subject to certain limits and restrictions:

- a corporation with less than $25 million of regulatory capital must not directly or through a subsidiary make or acquire a commercial loan if the loan or the aggregate value of all loans would exceed 5 percent of the total assets of the corporation;
- a corporation with more than $25 million of regulatory capital may directly or through a subsidiary make or acquire a commercial loan if the loan or the aggregate value of all loans in excess of 5 percent of the total assets of the corporation with the prior approval of the Superintendent;
- a corporation must not make or acquire an interest in real property loans, if the interest or aggregate value of all interest in real property would exceed a prescribed percentage of regulatory capital (70%);
- a corporation must not purchase or acquire shares or ownership interests in an entity and interests in real property if the aggregate value of the shares and ownership interests would exceed a prescribed amount;
- a corporation must not purchase or acquire shares or ownership interests in an entity if the aggregate value of the shares and ownership interests would exceed a prescribed percentage of regulatory capital (70%);
- unless approved by the Superintendent, a corporation and its subsidiaries must not acquire assets from another person or transfer assets if the value of assets would exceed 10 percent of the total assets of the company in the 12 months preceding the acquisition or transfer.

A corporation may not make a mortgage loan on residential property if the loan would exceed 75 percent of the value of the property, unless the loan is guaranteed or insured.

[Adopted by reference from federal trust and loan company legislation.]

Investment in Subsidiary/ Affiliates

Investment in subsidiaries or affiliates is subject to the following limits:

- a corporation must not make a substantial investment (more than 10 percent of the voting rights or 25 percent beneficial ownership of equity in a body corporate) in an entity other than a list of "permitted entities" – an association, a bank or a bank holding company, an insurance company or society or an insurance holding company, a trust or loan corporation, a credit cooperative association, a provincial trust or loan corporation, a provincial credit union, a securities dealer, a foreign financial institution;
- with respect to "permitted entities", the corporation may not acquire control of or acquire or increase a substantial investment unless, in the case of control, the entity meets the definition of control under the legislation;
- where a company acquires control or acquires or increases its substantial investment in a permitted entity through a temporary investment it must divest itself of this investment within two years.

A corporation may acquire control of or increase its substantial investment in

- an entity that engages in a financial service activity or any other activity that a retail association is permitted to engage in,
- an entity in its corporate group; and
- an entity that engages in the activities of a mutual fund entity or mutual fund distribution entity, or other prescribed entities.

[Adopted by reference from federal trust and loan company legislation.]

Related Party Transactions

Approach to Related Party Transactions

The approach to self dealing that applies to Saskatchewan loan and trust corporations is to define related parties and then establish a general prohibition against entering into transactions with related parties, subject to certain allowable transactions.

Related parties are defined broadly and include a person who has a significant interest in a class of shares of the corporation, a director or senior officer, a spouse, common law partner or child over 18 years of age, of a either a person with a significant interest or a director or officer, an entity controlled by either a person with a significant interest or a director or officer, an entity in which a person who controls the corporation has a substantial investment; a entity in which the spouse, common law partner or child over 18 years of age, who controls the company has a substantial, or is a person designated by Superintendent as a related party.

Directors and officers are also required to disclose where they have an interest in a material contract or proposed material contract with the corporation. Directors with a conflict of interest must not be present at any meeting where the contract is under consideration.

[Adopted by reference from federal trust and loan company legislation.]

Allowable Transactions

A corporation may enter into the following related party transactions:

- where the value of the transaction is nominal or immaterial to the company when measured against criteria established by the conduct review committee and approved by the Superintendent;
- loans or guarantees fully secured by securities of or guaranteed by the government of Canada or a province or security of a mortgage of the principal residence of that related party;
- deposits by the company with a financial institution that is a direct clearer or member of a clearing group under the Canadian Payments Association and the deposit is made for clearing purposes;
- borrowing of money from, taking deposits from, or issuing of debt obligations to a related party by the corporation;
- purchase or acquisition of securities of or assets of or guaranteed by the government of Canada or the province and goods for use in ordinary course of business;
- sale of assets of the company to a related party where the consideration for the assets is fully paid in money and there is an active market for those assets;
- lease of assets by corporation from a related party for use in ordinary course of business;
- written contract for the purchase of services used in the ordinary course of business;
- provision of services normally offered to the public by the corporation in the ordinary course of business;
- written contract providing for the networking of services and referrals;
- written contract for pension or benefit plans and their administration as incidental to the directorships or employment of officers or employees; and
- provision of management, advisory, accounting, information processing or other services in relation to the business of a related party.

All of these allowed related party transactions must be made on the basis of market terms and conditions except for:

- loans to full-time senior officers not exceeding $100,000 that may be made on terms and conditions more favourable than market terms and conditions, if the terms and conditions have been approved by the Conduct Review Committee;
- financial services, other than loans and guarantees to directors and officers, that may be made on preferred terms and conditions provided those preferred terms are also provided to other employees, and the Conduct Review Committee has approved the practice.

Board approval is required (approval of two thirds of directors at meeting) to make certain allowable transactions with related parties that would exceed in the aggregate two percent of total assets of the corporation. A corporation is restricted from entering into allowable transactions if the aggregate total of the transactions would exceed 50 percent of the regulatory capital of the corporation.

[Adopted by reference from federal trust and loan company legislation.]

Reporting and Audit

Required Reports

Annually, a corporation must prepare and place before its shareholders, a comparative financial statement, including the report of the auditor, and any other required information.

Scope of Financial Statements

Investments in subsidiaries or other corporations must be set out separately from the other assets in the balance sheet of a Saskatchewan trust or loan corporation.

A company must take all steps necessary to ensure that its auditor is appointed auditor of its subsidiaries. *[Adopted by reference from federal trust and loan company legislation.]*

Powers and Duties of Auditors

The auditor is responsible for making an examination and reporting on the annual statement and other financial statements under the Act that must be placed before shareholders.

The auditor has the right to request information from present and former directors, officers and employees and they must permit access to records and provide information to the auditor.

The auditor is entitled to receive notice of every meeting where matters relating to his or her work as an auditor are to be discussed.

The auditor is entitled to receive notice of every meeting of the audit committee and to attend and be heard. The auditor may call a meeting of the audit committee.

The auditor is required to make a report to chief executive officer and chief financial officer of any transactions that have come to the auditor's attention that may affect the well-being of the corporation. The report must be submitted to the CEO and the CFO and presented and consider by the board at the first meeting after the receipt of the report.

The auditor must notify the directors if he or she becomes aware of a material misstatement in the financial statements of the company. The directors are required to prepare and distribute a revised annual financial statement in these circumstances.

Audit Committees

Composition

The audit committee is composed of at least three directors, the majority of which are unaffiliated directors and none of which may be an officer or employee of the corporation or subsidiary of the corporation.

[Adopted by reference from federal trust and loan company legislation.]

Powers and Duties

The audit committee is responsible for

- reviewing annual statement before it is approved by directors;
- meeting with auditor and actuary to discuss statements and returns;
- reviewing returns of the company as specified by Superintendent;
- requiring the corporation to implement and maintain appropriate internal controls; reviewing and evaluating those procedures and meeting with

internal auditors to discuss effectiveness of internal controls;

- reviewing investments and transactions that could adversely affect the corporation.

[Adopted by reference from federal trust and loan company legislation.]

Removal/ Resignation of Auditor

The shareholders of a corporation may by ordinary resolution at a special general meeting revoke the appointment of an auditor.

An auditor who resigns or receives notice of a meeting of shareholders called for the purpose of removing the auditor or appointing another person as auditor may submit to the corporation a written statement giving the reasons for his or her resignation or why he or she opposes the proposed action.

Other Provisions

The Superintendent may require that the auditor report on the extent of the auditor's procedures and may require the auditor to extend the scope of his or her examination or direct that a particular procedure be preformed in a particular case.

The Superintendent may direct that a special audit of a Saskatchewan loan or trust corporation be made and may appoint an accountant or firm of accountants to undertake this special audit; the expense of such an audit are borne by the corporation.

[Adopted by reference from federal trust and loan company legislation.]

Regulatory Powers

Role of Elected Officials

There is no direct role for the Minister under the legislation. The Superintendent is responsible to the Minister for the administration of the legislation.

Regulatory Framework

Regulatory Organization

Under the legislation, the Superintendent of Financial Institutions is responsible to the minister for the administration of the legislation. The superintendent may appoint one or more deputy superintendents and may delegate any of his powers or duties to staff of his office. The Superintendent may retain experts to assist the Superintendent in carrying out his or her responsibilities.

The Superintendent has the authority to enter into agreements with other jurisdictions for the purpose of administering and enforcing the Act or a similar Act of another jurisdiction, including agreements authorizing the Superintendent to perform responsibilities and exercise the powers of the other government or regulatory authority and vice versa.

The recently passed *Saskatchewan Financial Services Commission Act* (assented to July 10, 2002) integrates the office of the three financial services regulators – the Financial Institutions Section of the Consumer Protection Branch, the Pensions Benefits Branch and the Saskatchewan Securities Commission – into a single financial services regulatory organization, the Saskatchewan Financial Services Commission

Inspection/ Examination

No specific requirement for an annual inspection of licensed corporations.

Regulatory Powers

The Superintendent has a wide range of powers, including the power to:

- issue orders requiring the preparation of reports, statements and records in accordance with standards or principles the Superintendent considers appropriate;
- direct a person provide any information that the Superintendent reasonably requires for the purpose of the Act;
- amend, suspend or cancel a license where in the opinion of the Superintendent the corporation has
    - failed to comply with a provision of the Act or an order of the Superintendent;
    - failed to pay a fine, penalty or cost imposed under the Act;
    - have provided false or misleading information;
    - in the case of an extraprovincial corporation, had its license or authority to carry on business suspended, cancelled or amended in any jurisdiction where the extraprovincial company carries on business;
    - in the case of a Saskatchewan corporation does not have sufficient assets to justify its continuance as a corporation or to provide proper security to person from whom it accepts deposits or from whom it borrows money;
    - ceases to be a member of the designated compensation association, unless exempt;
    - in carrying on business in a manner that is prejudicial to the public interest.

The Superintendent also has the general power to audit, examine, inspect and investigate any person governed by the legislation for the purpose of ascertaining whether the person is in compliance with the legislation. This includes entering and inspecting commercial premises, requiring information and assistance from the person and taking copies of documents and records. If as a result of an audit, examination, inspection or investigation, the Superintendent has reason to believe that a person may be in contravention of the legislation, the Superintendent may issue a warning. The court may on oath of the Superintendent issue a warrant allowing for the Superintendent to enter, search and seize information. The Superintendent has the power to appoint a receiver and order a person to hold funds or other property and where the Superintendent makes such an order, he or she must apply to the court within 15 days for a court order continuing the Superintendent's order.

As well, the Superintendent has the authority to issue cease and desist or compliance order where a person is not in compliance with the act or may be acting in a way that will put them in non-compliance with the act, or a person is acting in a way as to harm the interests of consumers. The Superintendent may apply to the court for an order of compliance.

Offences and Penalties

Types of Offenses

The following are offences under the act:

- Contravention of any provision of the legislation;
- Making a false or misleading statement.

Criminal Penalties

A person convicted of an offence is liable to

- in the case of an individual, a fine not exceeding $500,000 or to imprisonment of a term not exceeding 12 months, or both;
- in the case of a corporation, a fine not exceeding $1,000,000.

In addition to the penalty, the court may issue a compliance or cease and desist order with respect to the matter the person was convicted.

Admin Penalties

Additionally, where the Superintendent is satisfied that a person has contravened a provision of the act, the Superintendent may impose

- an administrative penalty of up to $100,000;
- a private or public reprimand;
- that the person pay the cost, to a maximum of $100,000, of producing material as specified by the Superintendent to promote education or knowledge in areas related to consumers and the activities of corporations.

As well, after providing a person with the opportunity to be heard, the Superintendent may order a person to pay the costs of an audit, examination, inspection or investigation under the Act.

The superintendent may file a certificate with the court certifying the amount of an administrative penalty or the amount due in costs and that the person is required to pay. A certificate filed with the court has the effect as if it were a judgment of the court for the recovery of the debt.

Recourse

Right to Hearing

The Superintendent must not refuse to issue a license, amend, suspend or cancel a license, or modify or impose new terms and conditions on a license without providing the applicant or corporation an opportunity to be heard. Where the Superintendent considers it to be necessary to protect the public interest, the Superintendent may immediately suspend, cancel or amend, modify or establish terms and conditions without giving the corporation the opportunity to be heard, but shall give the corporation the opportunity within 15 days of the Superintendent taking action.

Where the Superintendent intends to impose an administrative penalty, a reprimand or require a person to cover the cost of the production of educational material, the Superintendent must give notice to the person and that person has 30 days in which to make representations to the Superintendent respecting whether the penalty should be imposed or not. The Superintendent may confirm or vary his penalty and serve notice on the person.

Appeals Structure and Process

An appeal to any decision of the Superintendent may be made to the court but on a question of law only.

An appeal does not stay the Superintendent's order or decision.

Insurance

JURISDICTION: FEDERAL GOVERNMENT

Regulatory Approach

Activity or Entity Regulatory approach is based on the regulation of body corporates who carry on insurance business.

Nature of Approach Specific rules established for various types of body corporates involved in the regulation of insurance. Generally, each body corporate is subject to the same level of regulation as other body corporates in the group.

Corporate Framework

Incorporation

Method of Incorporation Incorporation of an insurance company or society is by letters patent issued by the Minister.

Prospective incorporators must publish notice of intent to incorporate in the Gazette and in a newspaper in general circulation at or near the place the head office is to be situated; any person who objects to the incorporation may submit an objection to the Superintendent who must inform the Minister. The application to incorporate is filed with the Superintendent. If satisfied that it is necessary and in the public interest, the Superintendent may hold a public inquiry into the objection to the application and make a report to the Minister. The Minister must make the report available to the public within 30 days of its receipt.

Incorporation Requirements Before issuing letters patent, the Minister must take into account relevant matters, including

- the nature and sufficiency of the financial resources of the applicant,
- the soundness and feasibility of the business plans and the business record of the applicant,
- the character and integrity of the applicant,
- whether the company will be operated responsibly by persons with the competence and experience suitable for involvement in the operation of a financial institution,
- the impact of the integration of the operations of the applicant with those of a company on the conduct of those operations, and
- the best interests of the financial system in Canada.

Incorporation Restrictions Governments or government entities may not be issued letters patent for the incorporation of an insurance company or society.

Where the proposed company would be a subsidiary of a foreign institution, that is engaged insurance and the application is made by a non-WTO members foreign institution, the Minister will not issue letters patent unless the Minister is satisfied that treatment as favourable for federal companies exists or will be provided in the jurisdiction in which the foreign institution principally carries on business.

The legislation also contains provisions and restrictions regarding company names including that a company must not use a name prohibited by an Act of Parliament, a name that the Superintendent believes is "deceptively misdescriptive" or will cause confusion.

Significant Changes

Types of Changes

Types of significant changes include:

Continuance – a corporation incorporated under the *Canada Business Corporations Act*, or any other Act of parliament, including an insurance holding company, may apply to Minister for letters patent continuing the corporation as a company under the *Insurance Act*; a body corporate incorporated other than by an act of Parliament, if authorized by its jurisdiction of incorporation, may apply to the Minister for letters patent continuing the body corporate as a company under the *Insurance Act;* and a fraternal benefit society incorporated other than by an Act of Parliament, if authorized by its jurisdiction of incorporation, may apply to the Minister for letters patent continuing fraternal benefit society as a society under the *Insurance Act*.

Discontinuance – a company or society may with the written approval of the Minister apply for continuance under the *Canada Corporations Act*, or letters patent under the *Bank Act* continuing the company or society as a bank or amalgamating and continuing the company or society as a bank;

Conversion from a mutual company to a share capital company;

Conversion of a share capital company to a mutual company;

Amalgamation – two or more bodies corporate that are incorporated by or under an Act of Parliament, including companies and insurance holding companies, may apply to the Minister for the issue of letters patent amalgamating and continuing the company as one mutual company; two or more bodies corporate that are incorporated by or under an Act of Parliament, including companies – other than mutual companies - and insurance holding companies, may apply to the Minister for the issue of letters patent amalgamating and continuing the company as one company. Two or more societies may also apply to amalgamate. There is also provision for "vertical short-form amalgamation" where the companies proposing to amalgamate are federal companies, are wholly owned subsidiaries and do not have participating policy holders; and "horizontal short-form amalgamation" where the companies proposing to amalgamate are federal companies, are wholly owned subsidiaries of same holding body corporate and do not have participating policy holders.

Transfer of Business and Reinsurance – the process for allowing a company to transfer all or a portion of its policies or cause itself to be reinsured, purchase or reinsurance all or a portion of a body corporate's policies, or sell all or substantially all of its assets.

Requirements Related to Significant

The Minister will not approve an application for continuance, discontinuance, conversion from a mutual company to a share capital company and vice a versa, and transfer of business and reinsurance, unless first approved by special resolution. All assets and liabilities of the company

Changes

or society that is to be continued or discontinued must also be accounted for.

Where a company proposes to mutualize, it must prepare a mutualization proposal setting out the terms and the means of effecting the conversion. Shareholders must approve the mutualization proposal by special resolution, in order the conversion to proceed.

Companies and societies proposing to amalgamate must enter into an amalgamation agreement that must be approved by special resolution of shareholders and policyholders of each amalgamating company. In determining whether to issue the letters patent, the Minister will consider the same factors as for the incorporation of a company.

Dissolution

Various types of liquidation and dissolution are provided for under the legislation, including:

Simple liquidation – where the company has no property and no liabilities, the Minister, on application may issue letters patent dissolving the company;

Voluntary liquidation and dissolution – may be initiated by directors or a proposal made by a shareholder; if the proposal to liquidate is passed by a special resolution of shareholders the Minister may, if satisfied that the circumstances warrant voluntary liquidation and dissolution, issue letters patent dissolving the company;

Court supervised liquidation – the Superintendent or an interested party may at any time during the liquidation of a company, apply to the court for an order for the continuance of the voluntary liquidation under the supervision of the court and where the court makes such an order it may appoint a liquidator.

Ownership

Ownership Requirements

The legislation includes a "public holding requirement" that requires that a company with equity of one billion dollars or more must have within a specified time frame, at least 35 percent of the voting rights attached to outstanding shares widely held (listed and posted for trading on a stock exchange and not held by a major shareholder of the company). Specified financial institutions and entities that control an insurance company may apply to the Minister for an exemption from this public holding requirement.

Ownership Restrictions

No person or entity controlled by a person shall without the approval of the Minister purchase a significant interest in any class of shares of a company (significant interest means the person holds in aggregate more than 10 percent of any class of the outstanding shares of the company).

Corporate Governance

Unaffiliated Directors

One-third of the directors of company must be unaffiliated directors.

Board Committees

The directors of a company must

- establish an audit committee [see section on "Reporting and Audit";
- establish a conduct review committee responsible for reviewing procedures established by management respecting self dealing composed of at least three directors, none of whom may be an officer or

employee of the company or of a subsidiary of the company and a majority of whom must be unaffiliated directors;

- designate a committee to monitor conflict of interest procedures established by the board;
- designate a committee to monitor the procedures of the board established for providing disclosure of information to customers and dealing with complaints.

Standard of Care for Directors and Officers

The directors of a company are responsible for managing or supervising the management of the business and affairs of the company.

Every director (and officer) must in carrying out his or her duties act honestly and in good faith with a view to the best interests of the company, and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Directors Qualifications

At least one-half of the directors of a company that is a subsidiary of a foreign institution and at least two-thirds of the directors of any other company must be resident Canadians.

A company must have at least seven directors and an individual is disqualified from being a director if the individual

- is less than eighteen years of age;
- is found to be of unsound mind,
- has the status of a bankrupt;
- is prohibited from exercising voting rights attached to shares of company
- is a person who is an agent, employee or Minister of the federal or provincial government or an agent or employee of a foreign government;
- an insurance agent or broker of the company.

Resignation/ Removal of Directors

The shareholders or policyholders of a company may by special resolution remove a director from office. A director who resigns or receives notice of a meeting called for the purpose of removing him from office or where another person is to be appointed to fill the office of the director because of resignation or removal, is entitled to submit to the company a written statement giving the reasons for the resignation or why the director opposes the proposed action or resolution. Where a director resigns because of a disagreement with the other directors or officer of the company, the director must submit to the company and the Superintendent a written statement setting out the nature of the disagreement. The company must distribute such a statement to each shareholder and policy holder entitled to receive notice of company meetings and the Superintendent.

Licensing of Domestic Entities

Licensing Requirements

A company or society must not engage in business until it is approved to commence operations by the Superintendent.

Licensing Approval

The Superintendent will not make an order approving a company or society commencing business until the Superintendent is satisfied that:

- the required meeting of incorporators, shareholders or supreme governing body has been held,

- the company has the required paid up capital,
- the incorporation and organization expenses of the company or society are reasonable, and
- other special provisions related to societies have been met.

Regulation of Extra-provincial Entities

Regulatory Approach	N/A
Restrictions and Limitations	N/A
Examination	N/A
Reporting and Records	N/A

Operations

Business Powers

A insurance company or society has the capacity of a natural person and the rights, powers and privileges of a natural person.

A company or society has the capacity to carry on business throughout Canada, and in a jurisdiction outside of Canada, as permitted by the laws of that jurisdiction.

Subject to the Act, a company must not engage in or carry on any business other than such business generally pertaining to the business of providing financial services. A company may act as a financial agent, receiver, liquidator or sequestrator; provide investment counselling and portfolio management services, issue and operate payment, credit and charge cards and operate a payment, credit or charge cared plan.

A company may also

- act as an agent for vendors, purchasers, mortgagors, mortgagees, lessors or lessees of real property and provide consulting or appraisal services in respect of real property;
- hold, manage and otherwise deal with real property;
- provide specified information processing services outside or in Canada with the prior written approval of the Minister, and engage in
  - collecting, manipulating and transmitting
    - information that is primarily financial or economic in nature;
    - that relates to the business of a regulated entity;
    - any other information that the Minister may by order specify
  - providing advisory or other services in the design, development, or implementation of information management; and
  - designing, developing or marketing computer software, and
  - designing, developing, manufacturing or selling, as an ancillary

activity, computer equipment integral to the provision of information services related to the business of financial institutions or to the provision of financial services;

- with the prior written approval of the Minister, develop, design, hold, manage, manufacture and sell or otherwise deal with data transmission systems, information sites, communication devices or information platforms or portals to provide information that is primarily financial or economic in nature and that relates to the business of a permitted entity;
- promote merchandise and services to the holders of any payment, credit or charge card issued by the company;
- engage in the sale of tickets, including lottery tickets, on a non-profit public service basis; urban transit tickets; government lottery tickets;
- act as custodian of property; and
- with approval of Minister, provide safety and risk management and claims adjustment services; operate rehabilitation and training centres; provide computer systems to independent insurance brokers and agents; provide support to independent insurance brokers and agents; operate repair and appraisal centres; and carry on any other activity that is reasonably ancillary to the business of insurance carried on by the company.

A life company may, subject to regulations, if any, engage in specialized business management or advisory services.

There is a specific provision allowing a company to network.

Restrictions on Business Powers

There is a general prohibition on an insurance company or society carrying on any business other than such business generally appertaining to the business of providing financial services.

A company is restricted to insuring only risks that fall within the classes of insurance that are specified in the order granted by the Superintendent approving the company to commence business.

An insurance company must not

- act in Canada as an executor, administrator, or guardian or committee of a mentally incompetent person or a trustee for a trust;
- deal in Canada in securities to the extent prohibited or restricted by regulations;
- unless approved by the Superintendent, be a general partner in a limited partnership or a partner in a general partnership;
- make guarantees unless the guarantee is for a fixed sum and the person on whose behalf the company has entered into the guarantee has an unqualified obligation to reimburse the company for the full amount; and
- if it is a life company, enter into personal property leasing activity in which a financial leasing entity is not permitted to engage, and, if it is a property and casualty company, any financial leasing of personal property.
-

Restrictions on Offices and Branching

A company must maintain a head office in Canada and must within 15 days after any change of address notify the Superintendent of any change in location of its head office.

Capital

Approach to Capital Adequacy

Minimum paid up capital is required at incorporation. For a society or a mutual company, this amount is the amount specified by the Minister, and, in the case of companies other than mutual companies is $10 million, or a greater amount required by the Minister.

On an ongoing basis, a company must maintain adequate capital in relation to its operations, and must comply with any regulations respecting adequate capital.

Regulations and Superintendent guidelines outline what constitutes the maintenance of adequate capital by companies and societies. Despite, compliance with these regulations and guidelines, the Superintendent may by order direct that a company or a society increase its capital.

Capital Requirements

A property and casualty company must maintain assets calculated according to a prescribed formula and based on the amount of reserves, other liabilities and unearned premiums, provisions for claims, premium income and claims incurred.

Restrictions on Capital

None

Investment & Lending

Approach to Investment and Lending

The *Insurance Act* establishes a prudent portfolio approach to investment and lending. The directors of a company are required to establish and a company is required to adhere to investment and lending policies, standards and procedures that a reasonable person would apply in respect of a portfolio of investments and loans to avoid undue risk of loss and obtain a reasonable return.

Investment and Lending Limits and Restrictions

The prudent portfolio approach is subject to certain limits and restrictions:

- a life company with $25 million or less of regulatory capital must not directly or through a prescribed subsidiary make or acquire a commercial loan if the aggregate value of all commercial loans held by the company or its prescribed subsidiaries would exceed 5 percent of the total assets of the company;
- a company with $25 million or less of regulatory capital that is controlled by a financial institution with more than $25 million of regulatory capital or a company with more than $25 million of regulatory capital may make or acquire a commercial loan if the aggregate value of all commercial loans held by the company and its prescribed subsidiaries exceeds 5 percent of the total assets of the company, only with the prior approval of the Superintendent;
- a property and casualty company must not make or acquire commercial or consumer loans if the loan or aggregate value of all loans would exceed a prescribed amount;
- a company must not directly or through a prescribed subsidiary

purchase or acquire an interest in real property loans if aggregate value of all interests of the company in real property would exceed 70 percent of regulatory capital;

- a company must not directly or through a prescribed subsidiary purchase or acquire participating shares or ownership interests in an entity (other than permitted entities in which it ahs a substantial interest) if the aggregate value of the shares and ownership interests would exceed 70 percent of regulatory capital;
- a company must not directly or through a prescribed subsidiary purchase or acquire participating shares or ownership interests in any entity (other than a permitted entity in which it has a substantial interest) or interests in real property if the aggregate value of the shares, ownership interests and interests in real property would exceed 100 per cent of regulatory capital;
- unless approved by the Superintendent, a company and its subsidiaries must not acquire assets from a person or transfer assets to a person if the total value of assets acquired from or transferred to that person in the12 months immediately preceding the acquisition or transfer would exceed 10 percent of the total assets of the company as shown in the last annual statement of the company prepared before the acquisition or transfer.

A company may not make a mortgage loan in Canada on residential property in Canada if the loan would exceed 75 percent of the value of the property, except in specified circumstances where there is a security or a guarantee.

Additionally, company and its subsidiaries may not enter into any debt obligation, other that a common share, if as a result the total debt obligations and stated capital of the company would exceed a prescribed percentage of assets of the company **[what percentage?]**.

Investment in Subsidiary/ Affiliates

In general, a company is not allowed to acquire control of, or to hold, acquire or increase a substantial investment in any entity, other than a permitted entity. The term "substantial investment" is defined as an interest in more than 10 per cent of the voting rights attached to all of the outstanding voting shares of a body corporate or an interest in any shares of a body corporate that exceeds 25 per cent of the shareholders' equity of the body corporate.

The term "permitted entity" is defined in the Act as including financial institutions (for example, banks, federal or provincial insurance companies, federal or provincial trust or loan corporations, credit cooperative associations, securities dealers, foreign institutions) as well as other entities that engage in specified activities. (This latter category would include such entities as factoring entities, finance companies, investment holding companies, information service entities, financial agents, mutual fund entities, investment counseling entities, and portfolio management entities.) Acquisitions of substantial investments in permitted entities are subject to approval and control requirements and other restrictions.

The Act also permits a company to acquire control of, or to acquire or increase a substantial investment in non-permitted entities as temporary investments or pursuant to loan workouts or realizations of security. In each case, the company must divest itself of the investment within a specified period of time

---

Related Party Transactions

Approach to Related Party Transactions

The legislation defines related parties and then establishes a general prohibition against entering into transactions with related parties, subject to certain permitted transactions.

Related parties are defined broadly and include a person who has a significant interest in a class of shares of a company; a director or senior officer; a spouse, common law partner or child over 18 years of age of a person with a significant interest or a director or officer; an entity controlled by either a person with a significant interest or of a director or senior officer; an entity in which a person who controls the company has a substantial investment; an entity in which the spouse, common law partner or child over 18 years of age, who controls the company has a substantial investment; or is a person designated by Superintendent as a related party.

Directors and officers are also required to disclose specified interests in material contracts or proposed material contracts with the company. Directors with a conflict of interest must not be present at any meeting where the contract is under consideration.

Allowable Transactions

A company may enter into the following related party transactions:

- where the value of the transaction is nominal or immaterial to the company when measured against criteria established by the conduct review committee and approved by the Superintendent;
- reinsurance against risk undertaken by the company;
- loans or guarantees fully secured by securities of or guaranteed by the Government of Canada or a province or loans made on the security of a mortgage of the principal residence of that related party;
- borrowing of money from or issue of debt obligations to a related party by the company
- issue of policies by the company to the related party;
- purchase or acquisition of securities guaranteed by the Government of Canada or a province and the purchase of acquisition of goods for use in the ordinary course of business;
- purchase or acquisition of assets fully secured by securities of the Government of Canada or the government of a province;
- written contract for the purchase of services used in the ordinary course of business;
- provision of services normally offered to the public by the company in the ordinary course of business;
- written contract providing for the networking of services and referrals;
- written contract for pension or benefit plans and their administration as incidental to the directorships or employment of officers or employees of the company; and
- provision of management, advisory, accounting, information processing

or other services in relation to the business of a related party.

All of these permitted related party transactions must be entered into on market terms and conditions except for:

- loans (other than margin loans) to full-time senior officers not exceeding the greater of twice the annual salary and $100,000 that may be made on terms and conditions more favourable than market terms and conditions, if the terms and conditions have been approved by the Conduct Review Committee;
- financial services, other than loans and guarantees to senior officers, that may be made on preferred terms and conditions provided those financial services are offered to employees of the company on those favourable terms and conditions and the Conduct Review Committee has approved the practice of making these financial services available on those favourable terms and conditions to senior officers.

Board approval is required (approval of two thirds of directors at meeting) to make certain permitted transactions with related parties that would exceed in the aggregate two percent of the regulatory capital of the company. A company is restricted from entering into permitted transactions with directors and senior officers, if the aggregate amount or value of the transactions would exceed 50 percent of the regulatory capital of the company.

Reporting and Audit

Required Reports

Annually, a company must prepare and place before its shareholders a comparative financial statement, including the report of the auditor, and the actuary and a description of the roles of auditor and actuary in preparing the statements.

The Act requires that each company appoint an actuary who is responsible for valuing the actuarial and other policy liabilities of the company at the end of the financial year and valuing any other matter specified in a direction of the Superintendent.

Public accountability statement:

Companies with equity of $1 billion or more are required to publish annually public accountability statements describing the contribution of the company and its prescribed subsidiaries to the Canadian economy and society. The statement must contain amongst other things, detailed examples of the company's goals in the area of community development and of its participation in such activities, information about the company's charitable and philanthropic activities, an overview of initiatives undertaken to improve access to financial services for low-income individuals, senior citizens, and disabled persons, a list of facilities that were opened and closed, and the total number of employees in each province.

Scope of Financial Statements

The company must include in its annual financial statements a list of subsidiaries of the company including the name and head office address of the subsidiary, the book value of shares of the subsidiary beneficially owned by the company and the percentage of voting rights attached to those shares.

A company must take all steps necessary to ensure that its auditor is appointed auditor of its subsidiaries.

A company must keep at its head office a copy of the current financial statements of each subsidiary of the company.

Powers and Duties of Auditors

The auditor is responsible for making an examination and reporting on the annual statement and other financial statements under the Act that must be placed before shareholders and policyholders.

The auditor may in conducting his examination rely on the valuation of an actuary.

The auditor has the right to request information from present and former directors, officers and employees and they must permit access to records and provide information to the auditor.

The auditor is entitled to receive notice of every meeting of the audit committee and conduct review committee and to attend and be heard. A member of the audit committee may request the auditor attend every meeting of the audit committee. The auditor may cal a meeting of the audit committee.

The auditor is required to make a report to chief executive officer and chief financial officer of any transactions that have come to the auditor's attention that may affect the well-being of the company. The report must be submitted to the CEO, the CFO and the actuary and presented and consider by the board at the first meeting after the receipt of the report.

A director of officer must notify the audit committee and the auditor of any material misstatement or error in the financial statement that they become aware of and the auditor must notify the directors if he or she becomes aware of a material misstatement in the financial statements of the company. The directors are required to prepare and distribute a revised annual financial statement in these circumstances.

Audit Committees

Composition

The audit committee is composed of at least three directors, the majority of whom are unaffiliated directors and none of whom may be an officer or employee of the company or subsidiary of the company.

Powers and Duties

The audit committee is responsible for

- reviewing the annual statement before it is approved by directors;
- meeting with the auditor and actuary to discuss statements and returns;
- reviewing such returns of the company as may be specified by the Superintendent;
- requiring the management of the company to implement and maintain appropriate internal control procedures; reviewing, evaluating and approving those procedures and meeting with the chief internal auditor and management to the discuss effectiveness of the internal control procedures;
- reviewing investments and transactions that could adversely affect the well-being of the company that the auditor or any officer of the company may bring to the attention of the committee.

Removal/ Resignation of Auditor

The shareholders or policyholders of a company may by ordinary resolution at a special general meeting revoke the appointment of an auditor. The Superintendent may at any time revoke the appointment of an auditor.

An auditor who resigns or receives notice of a meeting of shareholders and policyholders called for the purpose of removing the auditor or appointing another person as auditor shall submit to the Superintendent and the company a written statement giving the reasons for his or her resignation or why he or she opposes the proposed action.

Other Provisions

The Superintendent may require that the auditor report to the Superintendent on the extent of the auditor's procedures in the examination of the annual statement and may require that the auditor enlarge or extend the scope of his or her examination or direct that a particular procedure be performed in a particular case.

The Superintendent may direct that a special audit of a company be made and may appoint an accountant or firm of accountants to undertake this special audit; the expense of such an audit are borne by the company.

Regulatory Powers

Role of Elected Minister and Officials

The Minister is responsible for issuing letters patent incorporating a company, letters patent continuing a body corporate as a company under the Act, and letters patent dissolving a company. The Minister is responsible for approving fundamental changes (for example, amalgamations and sale of all or substantially all of the assets of a company). The Minister is also involved in approving changes of ownership (involving significant acquisitions), specified types of investments and specified activities that a company may engage in. There is a provision in the Act allowing the Minister to delegate any of his duties to the Minister of State appointed to assist the Minister.

The Superintendent is responsible for the day-to-day supervision and regulation of companies and for determining whether or not they are in sound financial condition and in compliance with the Act.

Regulatory Framework

Regulatory Organization

The Office of the Superintendent of Financial Institutions is responsible for the regulation of federal financial institutions, including insurance companies. The Minister of Finance is responsible for this Office.

Inspection/ Examination

A company or society must provide the Superintendent with such information, at such times and in such forms as the Superintendent may require.

Annually, a company and a society must prepare a return on the condition and affairs of the company, showing its assets, liabilities, and its income and expenditures for the past fiscal year. The annual return must be accompanied by a report of the company's auditor indicating whether the return accurately reflects the financial condition of the company.

The Superintendent, may from time to time, but at least annually, make an examination of each company to determine whether the company is complying with the Act and that the company is in sound financial condition. After each examination the Superintendent must report to the Minister.

If the Superintendent determines that the circumstances do not warrant it, the examination may be made less frequently than annually, but at least every three years.

Other Regulatory Duties

N/A

Regulatory Powers

The range of regulatory powers include:

- ability of Minister or Superintendent, in granting any approval or making any order, to impose terms and conditions or to require undertakings;
- "prudential agreements" that the Superintendent may enter into with a company for the purpose of implementing a measure to improve the company's safety and soundness;
- directions of compliance made by the Superintendent to a company or person to cease or refrain from committing an act that is unsafe or unsound, or from pursuing a course of conduct that is an unsafe or unsound practice and to perform such acts as are in the opinion of the Superintendent necessary to remedy the situation;
- application to court by the Minister or the Superintendent for an order to comply with a term or condition relating to an approval or to comply with an undertaking;
- application to court by the Superintendent for an order to comply with a prudential agreement or a direction of compliance;
- where a company is subject to conditions or limitations on its operations, a Superintendent's direction of compliance or an order by the Superintendent to increase its capital or liquidity, the Superintendent may disqualify a person from being elected or appointed as director or from being appointed as a senior officer or remove a person from the office of director on the basis that the person's competence, business record, experience, conduct or character makes that person unsuitable to hold that position;
- removal by the Superintendent of a person from office as a director or senior officer of a company if the Superintendent is of the opinion that the person is not suitable to hold that office on the basis of the competence , business record, experience, conduct or character of the person or because the person has contravened or has contributed to the contravention of the Act or regulations or specified regulatory measures.
- power of the Superintendent to order reinsurance of the assets of a company or to take control of the assets of a company or take control of a company where the company has failed to pay its liabilities, a state of affairs exists that may be materially prejudicial to the interest of policyholders, creditors or owners, the assets are unsatisfactorily accounted for, the regulatory capital has reached a level or is eroding in a manner that may be detrimental to its policyholders or creditors, the company has failed to comply with an order the Superintendent or any other state of affairs exists that may be materially prejudicial to the interest of the company or its policyholders, creditors and owners;
- power of the Superintendent, where control was taken of a company, to request the Attorney General to apply for a winding up order under the

Winding Up and Restructuring Act.

The Minister has the power to direct that a person dispose of that person's shares if that person has contravened certain provisions in the Act relating to ownership.

The Minister has the power to freeze a company's assets if the company fails to comply with the public holding (ownership) requirement.

Offences and Penalties

Types of Offenses

Any person who, without reasonable cause, contravenes the Act or regulations is guilty of an offence. A director, officer or auditor who without reasonable cause fails to provide information related to the condition or affairs of a company is guilty of an offence.

Administrative Penalties

There is an administrative monetary penalty regime set out in sections 24 to 35 of the *Office of the Superintendent of Financial Institutions Act*.

Criminal Penalties

Any person found guilty of an offence is

- in the case of a natural person, liable on summary conviction to a fine of not more than $100,000 or to imprisonment for a term of not more than 12 months or to both or on conviction on indictment to a fine of not more than $500,000 or to imprisonment for a term of not more than five years or to both;
- in the case of an entity, liable on summary conviction, to a fine of not more than $500,000 or, on conviction on indictment, to a fine of not more than $5 million.

If the court is satisfied that a person convicted acquired monetary benefits, it may order the convicted person pay an additional fine in the amount equal to those monetary benefits..

Recourse

Right to Hearing

Where the Superintendent intends to disqualify a person from being appointed or elected as a director or appointed as a senior officer, or to remove a director or senior officer from office, the Superintendent must give 15 days notice to that person to enable the person to make representations to the Superintendent.

Where the Minister does not intend to approve an application for an acquisition of a significant interest in any class of shares of a company, the Minister must notify the applicant of the right to make representations and provide the applicant with a reasonable opportunity within 30 days after the date of notice to make representations.

Where the Superintendent intends to take control of the assets of a company for more than 16 days or to take control of a company, the Superintendent must give notice to the company of the proposed action and provide the company with an opportunity to make written representations within the time specified in the notice, not exceeding 10 days of receipt of the notice.

Where the Minister intends to order that a person dispose of that person's shares (on account of a breach of specified ownership provisions), the Minister must give the person and the company a reasonable opportunity to make representations.

Appeals Structure and Process

A director or senior officer removed from office by the Superintendent may within 30 days after receipt of notice of the removal order appeal the matter to the Federal Court.

Where the Minister orders that a person dispose of the person's shares, that person may appeal to the Federal Court and the Court may dismiss the appeal, set aside the direction or decision, or send it back for re-determination.

Any decision or order of a court under the Act may be appealed to the court of appeal.

JURISDICTION – ALBERTA

Regulatory Approach

Activity or Entity

The focus is the regulation of insurance activities within Alberta. The Act defines what the business of insurance includes and then requires any person engaged in this activity to be licensed to carry on business in the province.

Nature of Approach

All regulated entities are subject to the same type of regulation depending on the extent of their insurance operations and are generally subject to same level of regulation.

Corporate Framework

Incorporation

Method of Incorporation

Incorporation is under the *Insurance Act* by application to the Minister.

One or more persons may apply to the Minister for the incorporation of an insurance company. The application must include

- information and material required by the Minster;
- a plan for the future conduct and development of the business of the company in Alberta;
- its proposed financial year;
- the location of the head office of the company in Alberta;
- the names of the first directors.

After filing, the applicants must publish the notice of application in the Alberta Gazette. A person has 30 days to file an objection to the application with the Minister.

No fraternal society may be incorporated, amalgamated or continued under the laws of Alberta.

Incorporation Requirements

Before approving the incorporation, the Minister must consider all matters relevant to the application, including

- the nature and sufficiency of the financial resources of the applicants;
- the soundness and feasibility of the plan for the future conduct and development of the business of the company;
- whether the company will be operated by person who are fit as to character and competence and experience suitable for involvement in the operation of an insurer.

On the recommendation of the Minister the Lieutenant Governor in Council will issue a certificate of incorporation.

Incorporation Restrictions

None, subject to the above noted conditions and that the business operations are restricted after incorporation and prior to licensing (a company will be dissolved one year after incorporation if not licensed).

Significant Changes

Types of Changes

Types of significant changes permitted under the Act include:

- a federally authorized or extraprovincial company may continue into the province as a provincial corporation;
- a provincial company may continue out of Alberta into another jurisdiction;
- a mutual provincial company may convert to a provincial company with common share or vice versa, subject to regulations;
- amalgamation in Alberta or outside of Alberta, of two or more provincial companies, or one or more provincial companies with one or more extraprovincial or federally authorized companies, except for an insurer formed outside Canada;
- transfer of business, and fundamental reinsurance wherein an insurer fundamentally reinsures any of its contracts, or any of the contracts of insurance of another insurer or sells all or substantially all of its assets.

Requirements Related to Significant Changes

The Minister will approve a continuance in or out of the province if the continuance is allowed and approved as required under the laws of its incorporating jurisdiction and the Minister is satisfied that the continuance will not adversely affect policy holders, shareholders or creditors. A continuance into Alberta must also meet the requirements for incorporation under the Alberta Act, and the company must intend to undertake the classes of insurance it undertook in its incorporating jurisdiction.

The Minister must pre-approve an amalgamation agreement and will, in the case of an amalgamation within Alberta, approve the agreement if accompanied by a report of an independent actuary; the laws of the incorporating jurisdictions allow for the amalgamation and the requirements of the regulations have been met. Following Ministerial approval the amalgamation agreement is subject to shareholder and participationg policyholder approval. Where a provincial company is amalgamated under the laws of another jurisdiction, the Minister must publish a certificate of discontinuance in the Alberta Gazette.

A company must publish notice of its intent to transfer business or fundamentally reinsure in the Alberta Gazette and obtain the required policy holder or shareholder approvals and the approval of the Minister. The Minister will not approve if the provincial company as a result of the agreement would be in contravention of its capital or liquidity requirements.

Dissolution

Dissolution Requirements

A provincial company may dissolve by way of:

- *Simple dissolution* – if the company has no property and liabilities it may apply to the Minister for a certificate dissolving the company if authorized by shareholders resolution, or directors resolution where there are no shareholders, and the Lieutenant Governor in Council may issue a certificate of dissolution;
- *Voluntary liquidation and dissolution* – if the company has property or property and liabilities, the company may apply to the Minister for

voluntary liquidation and dissolution if authorized by special resolution of its shareholders, or by board resolution if there are no shareholders, and the Minister may approve the application if satisfied that the circumstances warrant it and the company has transferred all or substantially all of its policies or reinsured all or substantially all of its policies. Where the company has property, or property and liabilities, the Minister, or any other interested person, may at any time apply to the court for an order that the company be wound up and subject tot he supervision of the court. Unless the court has made a court ordered liquidation, the LGIC may issue a certificate of dissolution.

- *Involuntary liquidation* – The Minister or any other interested person, may apply to the court for an order directing that a provincial company be wound up and subject to the supervision of the court. The court may grant such an order if the company has failed to exercise its corporate powers, or not commenced business for a period of four years, discontinued business for one year, the company's license is suspended for one year or more, the company has contravened the legislation and it is in the public interest that the company be wound up, or other sufficient cause.

A person may apply to the Minister, or court, as appropriate for an order to revive a dissolved company and the company may be revived for a specified period of time to carry out specified acts.

The dissolution provisions do not apply to a mutual provincial company or to a provincial company that is insolvent within the meaning of *Winding Up and Restructuring Act* (Canada).

Ownership

Ownership Requirements	None, other than a requirement to satisfy criteria for sufficient financial resources and fitness of applicants on incorporation.
Ownership Restrictions	None, other than a requirement for approval of significant transfers of shares.

Corporate Governance

Unaffiliated Directors	At least one-third of directors of a provincial company must be unaffiliated directors. Not more than one-third of directors of a provincial company may be persons who are currently, or within the last two years have been, remunerated officers or employees, insurance agents, brokers or adjusters of the company or any of its affiliates.
Board Committees	The directors of a provincial company *may* appoint from their number any committees they deem necessary and *must* establish an audit committee and a conduct review committee.

The conduct review committee must consist of at least three directors and two-thirds of those must be unaffiliated directors and none of the members of the conduct review committee may be officers, employees, insurance brokers, agents or adjusters of the company or subsidiary of the company. The CRC is responsible for establishing procedures for the review of related party transactions and practices of the company related to related party transactions as well as reviewing certain related party transactions. The procedures must be reviewed by the CRC on an annual basis. The CRC must report to the board of directors after each meeting on all transactions and matters reviewed by the committee.

Standard of Care for Directors and Officers

A director or officer must act honestly and in good faith and with a view to the best interests of the company and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

The directors of the corporation are responsible for managing and supervising the management of the business and the affairs of the corporation. Specific functions of the directors include establishing conflict of interest and disclosure of information procedures, establishing policies for determining dividends and bonuses to participating policy holders, establishing prudent investment standard policies and procedures and appoint an actuary.

Directors Qualifications

A company must have at least five directors and a majority of directors of a provincial company must be Canadian residents.

A director of a provincial corporation must be an adult, individual.

An individual is not qualified to be a director if the individual:

- is an undischarged bankrupt;
- is employed in the Alberta public service or by a Provincial agency under the *Financial Administration Act;*
- in the last five years, has been convicted of an indictable offence of a kind that is related to the qualifications and functions of a corporate director or an offence under the *Insurance Act*;
- is a dependent adult under the *Dependent Adults Ac,* is a formal patient under the *Mental Health Act*; or has been found to be of unsound mind by a court elsewhere than in Alberta;
- holds shares in a company where the individual is prohibited from exercising the voting rights under those shares or is a director or officer of an entity that holds shares in the company and is prohibited from exercising the voting rights under those shares;
- is disqualified by or fails to meet any qualification requirements in the company's bylaws.

Resignation/ Removal of Directors

The shareholders of a provincial company may by ordinary resolution at a special general meeting order the removal of a director from office. Where the holders of a class of shares have the exclusive right to elect one or more directors, a director so elected may only be removed by resolution at a meeting of shareholders of that class.

A director who resigns, receives notice of a meeting called for the purpose of removing the director from office or other meeting where another individual is to be elected to fill a vacancy whether created by resignation, removal or expiration of a director's term ***may submit*** a written statement to the corporation giving reasons for the director's resignation or reasons why the director opposes any proposed action or resolution as the case may be.

The director ***must submit*** a statement where the director resigns due to a disagreement with an action or omission of the board of directors or the management.

The company must send this statement to all the other directors and to all shareholders unless the directors consider that there are reasonable grounds that such action could materially and adversely affect the financial viability of the corporation.

When a director is removed or resigns as a result of a disagreement, the director must also give notice to the Minister and provide the Minister with the copy of a his or her written statement if any.

Licensing of Domestic Entities

Licensing Requirements

A provincial company can not engage in insurance business until it is licensed under the Act.

An application for a license must specify the classes of insurance that the applicant wishes to be authorized to undertake and include:

- a plan for the conduct and development of the business of the company;
- a copy of all policy forms and forms to be used in Alberta;
- the appointment of an attorney for service and address of its chief agency in Alberta; and

A license expires on December 31 of the year in which it was issued or renewed. If an insurer is not going to renew its license it must give the Minister 30 days notice.

A licensed insurer may request the Minister cancel the insurer's license, and the Minister must not cancel the license unless satisfied that the insurer has no unpaid claims, no outstanding insurance contracts in Alberta and no outstanding fees or taxes payable to the government.

Licensing Approval

On application, specifying the classes of insurance that the insurer plans to undertake and containing the required information, an insurer is entitled to a license if the Minister is satisfied that the requirements of the Act respecting licensing have been met and the insurer is in compliance with the Act.

The Minister will not issue a license unless

- in the case of a life company, the company has a capital base of $5 million; and
- in the case of a property and casualty company, the company has a capital base o $3 million; and
- the company's capital base is adequate, taking into account the nature and volume of its business and any restrictions.

The Minister may refuse to issue or renew a license if the Minister is satisfied that the insurer is not complying with the laws respecting market conduct activities in other jurisdictions in which t is licensed.

Regulation of Extra-provincial Entities

Regulatory Approach

No insurer can carry on business in Alberta unless the insurer holds a license issued under the Act.

Defined extraprovincial insurers eligible for a license are:

- extraprovincial companies (an insurer incorporated in another province or territory and which is authorized to carry on insurance business in that jurisdiction);
- federally authorized companies (means an insurer that is a company, society, or foreign company under the *Insurance Companies Act* (Canada) that is approved to carry on business or to insure risks in Canada);
- an insurer made up of underwriters or syndicates of underwriters operating under a plan known as Lloyd's or other plan approved by the Minister.

Fraternal societies are eligible for licensing only if the fraternal society is

- a federally authorized company, or
- incorporated under the laws of another province and has been continuously licensed in Alberta under the current and predecessor Act.

Extraprovincial Crown insurers may not be issued a license under the Act.

The Act also contains distinct provisions regarding the licensing of reciprocal insurance exchanges.

If the license of an extraprovincial insurer is cancelled or suspended under the laws of the incorporating jurisdiction, the Minister will take the same action in Alberta. If the license of an extraprovincial has conditions imposed on it by its incorporating jurisdiction, the Alberta license is automatically subject to the same conditions and if its incorporating jurisdiction deletes a class of insurance from the license the same class is automatically deleted from its Alberta license.

Restrictions and Limitations

The requirements for licensing, and canceling of a license, are essentially the same for extraprovincial and foreign companies as for provincial companies, except that in its application for licensing, an extraprovincial or foreign company must also provide:

- a copy of its instrument of incorporation and bylaws;
- if the applicant is an extraprovincial company, a certified copy of its authority to carry on business from its jurisdiction of incorporation and a copy of its latest audited financial statements;
- if the applicant is a federally authorized company, a copy of the order approving the company to carry on business or to insure risks in Canada.

The minimum capital requirements only apply to an extraprovincial company and not a federally authorized company.

Extraprovincial licensed insurers must not undertake activities prohibited under the Act to all insurers.

Examination

A licensed insurer must, on demand, provide the Minister, the Superintendent or an examiner with access to information or records for the purpose of determining if there is compliance with the Act or to examine any matter relating to a contract of insurance.

Reporting and Records

Within 180 days of its year-end, every licensed insurer must provide the Minister with a copy of the insurer's audited financial statements.

Every insurer must each year submit a report to the Minister setting out the particulars of the insurer's insurance business written in Alberta during that year. Where Alberta has an information sharing agreement with a government in Canada, the Minister may allow the insurer to submit the report to the appropriate government official.

Operations

Business Powers & Restrictions

A provincial company has the rights, powers and privileges of an individual and the capacity to carry on its business in any jurisdiction outside Alberta to the extent permitted by the laws of that jurisdiction.

Subject to the legislation, a provincial company must not engage or carry on any business other than the business of insurance (including activity that is reasonably ancillary to insurance) or the business of providing financial services.

The business of providing financial services includes:

- acting as a receiver, liquidator or sequestrator,
- issuing payment, credit or charge cards or in cooperation with others, including financial institutions, operating payment, credit or charge card plans;
- providing real property brokerage services;
- holding and otherwise dealing with real property;
- providing information processing services that the provincial company has developed for its own use and that are integral to the company's operations;
- promoting merchandise and services to holders of any payment, credit or charge card issued by the company;
- acting as custodian of property;
- acting as a trustee for a trust in respect of prescribed transactions;
- networking arrangements; and
- any activity ancillary to providing financial services approved by the Minister.

A provincial company must not carry on activities that require registration under the *Securities Act* and may only carry on an activity regulated under the *Securities Act* if that Act allows a company to carry on that activity without being registered. A company may not make guarantees unless it is for a fixed sum of money and there is an unqualified obligation to reimburse.

A provincial company must not carry on any business it is prohibited from carrying on under the Act and must not exercise its powers in a manner contrary to the legislation.

Restrictions on Offices and Branching

Every provincial company must have a head office in Alberta.

Borrowing

A provincial life company and its subsidiaries must not enter into a debt obligation or issue any share other than a common share if as a result the total debt obligations of the company and book value of shares would exceed 20% of the total assets of the company.

A provincial property and casualty company must not enter into any debt obligation or issue any share other than a common share if as a result the total debt obligations of the company and book value of shares would exceed 2% of the total assets of the company.

Capital

Approach to Capital Adequacy

Reserves of assets approach for property and casualty insurers.

[Note: These provisions are to be replaced with a provision establishing that a "provincial corporation maintain adequate capital and adequate and appropriate forms of liquidity and comply with any regulations in relation to capital and liquidity. Property and casualty insurance companies will be subject to a new capital adequacy test that has risk weighting components; the federal Minimum Continuing Capital Surplus Requirement (MCCSR) test will be adopted for provincial life insurance companies.]

Capital Requirements

Every provincial company, other than a company in the business of life insurance, must maintain assets equal to the aggregate of

- an amount equal to the reserve for non-cancellable accident and sickness policies and claims under accident and sickness policies payable in installments;
- an amount equal to 1.15 times the amount of unearned premiums in respect of policies other than accident and sickness policies;
- an amount equal to 1.15 times the amount of provisions for claims incurred but unpaid other than claims for accident and sickness;
- an amount equal to the total of other liabilities of the company.

The aggregate of amounts may be reduced when the risk or part of its is reinsured in whole or in part.

Restrictions on Capital

A provincial company may not fundamentally reinsure its contracts of insurance with an insurer or reinsure an insurer's contracts of insurance if such an arrangement would put the company in contravention of its capital adequacy requirements.

Investment & Lending

Approach to Investment and Lending

Prudent portfolio approach – a provincial company must adhere to prudent investment standards in making investment decisions and in managing its total investments.

Prudent investment standards are those that a reasonably prudent person would apply to investments made on behalf of another person with whom there exists a fiduciary relationship; just because a company is in compliance with the specific provisions of the legislation does not mean that it is in compliance with this requirement.

The board must establish written investment procedures to ensure prudent standards are applied and review these standards at least twice a year.

Investment and Lending Limits and Restrictions

A provincial corporation shall not directly or indirectly make a loan to or other investments in a person or two or more connected persons in an amount greater than $500,000 or 5% of the provincial corporation's total assets; 2% in the case of commercial loans.

No provincial company may make a loan on security of residential property where the amount of indebtedness would exceed 75 % of the market value unless the excess is guaranteed or insured.

A provincial life company or property and casualty company must not and must not permit its subsidiaries to make or acquire commercial loans if the aggregate of all commercial loans exceeds 5% of the assets of the company or subsidiary. If a life company has $15 million of base capital it may make or acquire commercial loans or acquire control of a permissible body corporate that holds commercial loans in excess of this limit. With Ministerial approval.

A provincial company may not acquire real property in excess of 10% of assets.

No provincial company may purchase or acquire permit its subsidiaries to purchase or acquire an investment in shares of a body corporate or interest in a unincorporated body and interests in real property, if the aggregate of all such investments exceeds 30% of the assets of the company and subsidiary.

In any 12 month period, a provincial company may not, without the approval of the Minister acquire or dispose of assets have a value in the excess of 10% of the total assets of the company at the beginning of that period.

Investment in Subsidiary/ Affiliates

No provincial company may beneficially own more than a 10% interest in an unincorporated body unless the unincorporated body is a bank, a loan or trust corporation, a insurer, with the approval of the Minister a foreign financial institution, a prescribed body corporate.

No provincial company may have a substantial investment (10% of voting rights in one corporation or 25% of any shares) in a body corporate unless the body corporate is a bank, a loan or trust corporation, a insurer, with the approval of the Minister a foreign financial institution, a prescribed body corporate or other prescribed corporation. Prescribed corporations include:

- a factoring corporation;
- a financial leasing corporation, but only if it does not hold shares of any other corporation; not less than 80% of its assets are receivables under financial lease agreements; and it meets all the conditions that apply to credit unions engaging in financial leasing;
- an information management corporation that carries on the business of the collection, manipulation and transmission of information that is primarily financial or economic in nature or the sale of related software;
- an investment counselling corporation, registered as such under the

Securities Act;

- a mutual fund corporation, whose activities are limited to the investing of funds of the body corporate or a body corporate that is an issuer of securities that entitle the holder to receive an amount computed to the value of the proportionate interest in the whole or part of the assets, including a separate fund or trust account;
- a mutual fund distribution corporation, registered as a mutual find dealer under the *Securities Act*;
- a portfolio management corporation, registered as such under the *Securities Act;*
- a real property brokerage corporation or a real property management corporation;
- a real property corporation engaged in holding managing or otherwise dealing with real property or shares of a body corporate or interest in an entity engaged in holding, managing or dealing with real property;
- a real property holding vehicle, being a limited partnership or trust that is primarily engaged in holding, managing or otherwise dealing with real property or shares of a body corporate or interest in an entity engaged in holding, managing or dealing with real property;
- a securities dealer;
- a service corporation provided the subsidiary or affiliate does not hold shares issues by any other corporation;
- a financial institution that is affiliated with a provincial company; and
- a specialized financing corporation, that is primarily engaged in providing specialized business management in making investments or providing financing or advisory services.

No provincial company may purchase or acquire or permit its subsidiaries to purchase or acquire an investment in shares of a body corporate or interest in a unincorporated body, other than those in which the company has, or by virtue of the acquisition would have a substantial interest, if the aggregate of all such investments exceeds 20% of the assets of the company or subsidiary.

Related Party Transactions

Approach to Related Party Transactions

The Act prohibits provincial companies form engaging in transactions with related parties that are on more preferential terms than those granted in the normal course of business, to the company's detriment, or otherwise contrary to the best interests of policyholders.

General ban approach –

- no provincial corporation or its subsidiaries shall directly or indirectly engage in a transaction with a related party, enter into a guarantee on behalf of a restricted party or make an investment in securities of a restricted party; and
- no related party shall directly or indirectly engage in a transaction with a provincial corporation.

Where the auditor or a professional advisor of the corporation becomes aware of a contravention of a restricted party provision, the auditor must make the board aware and the advisor must make the auditor and board of aware of the contravention. The corporation must notify the auditor and the Minister about the contravention.

Any interested person, including the Minister, may apply to court for an order setting aside a prohibited restricted party transaction, guarantee or loan. The Minister may designate any person as a restricted party.

Allowable Transactions

The general ban does not apply to granting of an indemnification to directors; the issue of shares by a provincial company; or the payment of salaries, fees, stock options, etc., to persons who are related parties in their capacity as directors, officer or employees of the company.

Subject to an overall limit of 10% of the provincial company's total assets, a provincial company may enter into a transaction with a related party

- that involves minor or general expenditures by the company or subsidiary (with what constitutes a minor or general expenditure determined by the Conduct Review Committee)
- for the sale of goods or provision of financial services that are normally sold to the public by the company in the ordinary course of business provided the price and rates charged are fair market value;
- that is a financial institution if the transaction is a deposit made a fair market rate (subject to a limit of 2% of the company's total assets. or the transaction is an acquisition of prescribed securities at fair market rate;
- who is a senior official, by way of loan or guarantee provided the principal and interest on all loans does not exceed the lesser of $100,000 or twice annual salary of the official;
- for purpose of reinsurance;
- concerning policy dividends or bonuses or policy proceeds.

A provincial company may also enter into the following related party transactions as approved by the directors:

- written contract for management services provided consideration at fair market rate;
- lease of real estate or personal property provided the rent is at fair market value and term of lease does not exceed five years for personal property and 20 years for real estate;
- pension, benefit, stock or incentive plans incidental to employment;
- provision of goods or services, other than management services, so long as price paid for goods or services is at fair market value and term does not exceed five years;
- acquire or sell prescribed securities so long as transaction at fair market value;
- a loan to or guarantee of the obligations of an entity if loan or guarantee at fair market value;
- a loan to a senior official, employee or spouse of such on security of residence or a personal loan fully secured by other than a promissory

note, provided loan at fair market value;

- a loan, agreement respecting disposition of assets, a guarantee of the obligations to or with a related party that is a financial institution provided the loan, agreement or guarantee is at fair market value; and
- any other prescribed related party transaction that a company may enter into with the prior approval of the directors.

If a company gets the prior approval of the Minister, it may enter into a related party transaction otherwise prohibited under the Act.

A related party who knows or has reason to believe that the party is a restricted party of the corporation and is about to enter into a transaction with the corporation must disclose their interest to the corporation.

Reporting and Audit

Required Reports

Within 180 days of its year-end every licensed insurer must provide the Minister with a copy of the insurer's audited financial statements prepared in accordance with required generally accepted accounting, auditing and actuarial principles, standards and practices.

Provincial companies must file an annual return within the Minister, signed by a member of its executive, setting out :

- the company's particulars;
- its assets, liabilities, receipts and expenditures for the year;
- particulars of business done in Alberta that year;
- the actuary's valuation; and
- any other information that the Minister considers necessary.

Scope of Financial Statements

Provincial companies that have a subsidiary must also provide the Minister with a copy of their subsidiaries audited financial statements and the Minister may require the holding body corporate of a provincial insurer to provide the Minister with its annual audited statements and the statement of all the holding body's subsidiaries.

The company must take every step to ensure that its auditor is also appointed auditor of its subsidiaries., unless the subsidiary carries on its operations outside of Canada and this is not permitted or the provincial company's auditor is of the opinion that the total assets of the subsidiary are not a material part of the total assets of the company.

Powers and Duties of Auditors

The auditor of a provincial corporation is responsible for conducting an audit and examination of the corporation and the corporation's subsidiaries financial statements and making a report on them.

A shareholder, or participating policy holder or director may request that the auditor attend a general or special meeting to discuss the exercise of the auditor's duties and powers and the auditor is required to attend unless the audit committee determines that the shareholder's issue relates to a personal grievance.

Where the auditor considers that there has been a change in circumstances that might reasonably be expected to materially and adversely affect the financial position of the corporation, the auditor must make a report to the audit committee. A copy of this report must also be sent to the chief executive officer of the company, the actuary and the Minister.

The auditor and internal auditor are entitled to receive notice of and attend the meetings of shareholders and policyholders. The conduct review committee and audit committee must give reasonable notice of their meetings to the auditor. The auditor is entitled to attend and be heard at all meetings of the audit committee and may call a meeting of the audit committee.

The auditor is entitled to request and receive any information and explanations that are in the auditor's opinion required to allow the auditor to make his or her report.

The Act also requires that a provincial company appoint an actuary, responsible for valuing the policy liabilities of the company at year end and any other matter specified in any direction of the Minister.

Audit Committees

Composition

The audit committee must consist of at least three directors and two thirds of the members must be unaffiliated directors.

Powers and Duties

The audit committee must

- review any annual audited financial statements to be distributed to shareholders and the annual return of the company and meet with the auditor and the actuary to discuss these;
- ensure that appropriate internal controls and in place and meet with the internal auditor to discuss the effectiveness of these controls;
- review the investments and transactions that could adversely affect the well being of the company that the auditor or any other officer bring to the committee's attention.

The audit committee must report on the annual financial statements and the auditor's report to the directors before the directors approve them. The audit committee may call a meeting of the directors at its discretion.

Removal/ Resignation of Auditor

The directors of a provincial company must revoke the appointment of an auditor if the auditor no longer meets the required qualifications and the auditor does not resign or does resign and the designated individual appointed by the auditor does not meet the requirements. The Minister may also revoke the appointment of an auditor under these circumstances.

Any interested party may apply to court for an order declaring an auditor or its designated individual does not meet the required qualifications under the Act. Where there is a vacancy, due to removal or resignation, the policy holders or shareholders, or if the bylaws permit, the directors must forthwith appoint a new auditor to fill the vacancy. Where the auditor resigns, is removed or learns of a meeting where he or she is not to be reappointed, the auditor may submit to the company and the Minister a written statement outlining the reasons for the resignation or why in the auditor's opinion the appointment is to be revoked or not renewed. Where the auditor's statement is based on a disagreement between the auditor and the directors a copy of the statement must be sent to shareholders and participating policyholders.

Other Provisions

Where a director or officer of a provincial becomes aware of an error or misstatement in an annual financial statement, they must notify the audit committee. If the auditor feels the error is material they must inform each director, the actuary, a former auditor, if applicable and the Minister. The directors must prepare and issue a revised annual financial statement or other statement and inform shareholders, policyholders and the Minister of the impact of the error.

The Minister may required the auditor to report to him or her on the auditor's procedures and may require the auditor to enlarge the scope of the audit or direct that a particular procedure be applied or make a particular examination.

Regulatory Powers

Role of Elected Officials

The Minister is responsible for making most decisions under the legislation; the Lieutenant Governor in Council is responsible for issuing certificates to incorporate, amalgamate and undertake other fundamental changes and to dissolve a provincial company and making an order to take possession and control of a provincial insurer's assets.

Regulatory Framework

Regulatory Organization

The Minister is charged with the administration of the Act, but may delegate any power, duty or function imposed under the legislation to any person and may authorize that person to further delegate the power or duty. Most regulatory decisions are delegated to the Superintendent or the Alberta Insurance Council. The Minister may not delegate the power to make regulations, power to make a cease and desist order, power to make recommendations to the Lieutenant Governor in Council, power to freeze assets and power to apply to court for compliance order.

The Minister may appoint a Superintendent and Deputy Superintendent of Insurance.

Inspection/ Examination

The Minister must each year examine the business or affairs of a provincial company. The Minister may also order a special examination for the purpose of safeguarding the interest of policyholders, the assets of the company or subsidiary, or determining whether the company is able to meet its obligations.

A provincial company must, on demand, provide the Minister, the Superintendent or an examiner with access to information or records, including entry into the premises of the company, for the purpose of determining if there is compliance with the Act, to conduct an examination, or to examine any matter relating to a contract of insurance.

The Minister may seek a court order to authorize access to the premises and to carry on the examination.

Regulatory Powers

The Minister may cancel, suspend or refuse to renew the license of a licensed insurer or may impose conditions on the license where:

- the licensed insurer denies the Minister, the Superintendent or an examiner rightful access to information or records;
- the holding body of a licensed provincial company does not forward its audited financial statements to the Minister as required;

- the licensed insurer or other person contravenes an order of the Minister, a review board decision, or an order of the court;
- a licensed insurer is convicted of a tied selling prohibition, or commits a specified offence under the Act;
- grounds exist for possession and control of the assets of a provincial company;
- a provincial company is carrying on business in another jurisdiction without authorization;
- a licensed insurer fails to comply with any condition of its license;
- a licensed insurer does not engage in the business of insurance; or
- fails to comply with a market conduct provision of the Act.

The Minister may appoint a provisional liquidator to be in charge of the affairs of a provincial company if the company fails to renew its license on an annual basis, the application to renew is refused, or the company's license is cancelled by the Minister.

The Minister must cancel the license of an insurer if the Minister is satisfied that a judgement arising out of a contract of insurance remains unpaid after 30 days. The Minister may revive the license once the claim is paid.

The Minister also has power to

- require an appraisal of a provincial company's assets if the Minister believes the value placed on an real estate asset is too great, the amount secured by a mortgage is not sufficient security, or the market value of any investment is less than the amount show on the books;
- where the Minister believes that a person has or will be in contravention of the legislation, an undertaking or prescribed industry guidelines, or is pursuing a market conduct activity that might reasonably be expected to prejudice or adversely affect people insured or interested in acquiring insurance, or where the Minister believes that a provincial company is carrying on business in an unsound manner or pursuing a course of action that might prejudice or adversely affect policy holders, issue a cease and desist order, an order requiring the person to undertake certain actions to remedy the situation or enter into a compliance undertaking;
- freeze assets pending an examination, where the Minister is about to revoke or suspend a license of a provincial company, or where proceedings are about to be or have been instituted.

The Minister may also apply to the court for an order for compliance or placing terms and conditions on a license.

The Minister, on the direction of the Lieutenant Governor in Council, may for serious transgressions take possession and control of a provincial company's assets, and with respect to an extraprovincial company, if requested by the regulator of the incorporating jurisdiction, Where the Minister takes possession and control of the assets of a provincial company, the Minister shall manage the business and affairs of the corporation and may appoint one or persons to do this on his or her behalf. Where the Minister takes possession and control of a extraprovincial company, the

Minister holds and controls those assets on behalf of the regulator from the incorporating jurisdiction. Where the Minister has taken possession and control of a provincial company's assets, the Minister may apply to the court for an order authorizing the sale of assets of the company. If the LGIC is satisfied that it is proper for the company to resume possession and control of its assets the LGIC may restore the possession and control of assets to the company. If the LGIC feels that further efforts to rehabilitate the corporation are futile, the LGIC may apply to the court for an order to liquidate and dissolve the corporation.

Offences and Penalties

Types of Offenses

There are two categories of offences under the Act: a long list of general offences in relation to contravention of specific sections of the Act and specific offences related to certain actions or conduct (contraventions of orders, directions, undertakings or terms and conditions of instrument of incorporation or licenses, and making false or deceptive statements and trafficking in life insurance policies).

Administrative Penalties

The Minister may apply an administrative penalty for contraventions of specific provisions in the regulations including record keeping and safeguarding requirements and restrictions on financial leasing, replacement of life insurance contracts, insurance agents and adjusters and market conduct rules.

The Minister is responsible for determining the amount of the administrative penalty based on the seriousness of the contravention, its importance to the regulatory scheme, the degree of willfulness, mitigating factors, remedial steps taken, history of non-compliance, economic benefit derived and other relevant factors.

Criminal Penalties

A person convicted of an offence is liable to a fine of up to $200,000.

Recourse

Right to Hearing

Where the Minister is going to make a cease and desist order or an order requiring remedial action, or an order to suspend or cancel or refuse to renew a license, the Minister must give notice to the person or licensed insurer (except where action taken due to non-payment of claims). If the Minister believes that the public interest may be adversely affected by a delay, the Minister may cancel suspend or refuse to renew without notice and then must give notice to the licensed insurer.

An insurer who receives notice that the Minister plans to, or has, suspended, cancelled or refused to renew its license, may within 15 days of the notice request a hearing. Following the hearing the Minister may confirm or modify the action taken or to be taken.

Appeals Structure and Process

A party aggrieved by specified significant decisions or actions of the Minister under the legislation is entitled to have the decision reviewed by a review board appointed by the Minister. The review board must consist of one person designated as Chair by the Minister and not fewer than two or more than four persons who must not employed in the Alberta public service.

The Minister must appoint the review board within 30 days of receiving the notice of objection from the party to the decision or action (the party has 90 days to file its objection). The Minister must set a period not exceeding 90 days in which the review board will is to make the review and give its written decision. This period may be extended but only once and only by 45 days. The review board may confirm, rescind, or vary the decision that is the subject of the review.

A party may appeal a decision of the review board to court. A person may apply to the Minister for leave to appeal directly to the court and where granted the person is considered to have waived their right to a review.

Where a party is appealing a decision to the review board or the court as the case may be, the appeal does not operate as a stay of the decision. However, the review board or the court may grant a stay in respect of a decision. The Minister will not issue a certificate of dissolution if the decision to dissolve is under appeal.

JURISDICTION – ONTARIO

Regulatory Approach

Activity or Entity	The focus is the regulation of insurance activities within Ontario. The Act defines what the business of insurance includes and then requires any person engaged in this activity to be licensed to carry on business in the province.
Nature of Approach	All regulated entities are generally subject to same level of regulation.

Corporate Framework

Incorporation

Method of Incorporation	Ontario insurers are incorporated under the *Corporations Act* by letters patent. Applicants for incorporation must give the Superintendent at least one month's notice of their intention to incorporate an insurance company and must place four consecutive notices in the Gazette.
Incorporation Requirements	The Lieutenant Governor in Council may by letters patent, issue a charter to persons to form a corporation. There must be a minimum of three initial incorporators, eighteen years of age or more, who become shareholders or members of the corporation upon issue of the charter.
Incorporation Restrictions	None

Significant Changes

Types of Changes	*Transfer* – an arrangement to transfer contracts may be made by a licensed insurer incorporated or organized under the laws of Ontario to another insurer by novation, transfer or assignment or as result of amalgamation *Amalgamation* – two or more insurers may amalgamate and continue as one insurer. Under the *Corporations Act*, the insurers must enter into an amalgamation agreement approved by two-thirds of the shareholders of the companies. If approved, the companies may jointly apply to the Lieutenant Governor in Council for letters patent which the LGIC will issue provided all the property, assets and liabilities of the amalgamating companies are dealt with. *Continuation* – under the *Corporations Act*, a insurance company incorporated under that Act may, if authorized by special resolution of its shareholders, by the Superintendent of Financial Services, and by the laws of any other jurisdiction in Canada, apply to the proper officer of that other jurisdiction for an instrument of continuation continuing the insurance company as if it had been incorporated under the laws of that other jurisdiction.
Requirements Related to Significant	No transfer agreement shall be entered into without the prior permission of the Superintendent and the agreement is not binding or effective until approved by the Superintendent. In the case of the amalgamation of insurers, if one of the contracting

Changes

insurers is an insurer not incorporated or organized under the laws of Ontario, the Superintendent shall not approve the transfer of contracts until it has been established to the Superintendent's satisfaction that the insurer have fully complied with the requirements of the laws of the legislation authority under which the insurer was incorporated.

The Superintendent may invite written submissions respecting the transfer and then approve or reject the transfer. Persons who have made a written submission may appeal the decision of the Superintendent to the Financial Services Tribunal.

Dissolution

Under the *Corporations Act*, where an insurance company resolves to be voluntarily wound up, it must give notice to the Superintendent and indicate the date on which it will cease entering into contracts of insurance and provide the name of its liquidator. The liquidator may arrange for reinsurance of existing contracts of insurance.

Where a company has ceased to do business except to wind up its affairs and has no debt or obligations, the directors may issue an order for the distribution of remaining assets. Such an order must be approved by a two-thirds vote of shareholders and the Lieutenant Governor in Council.

A insurance company may also be wound up under the *Corporations Act* by court order upon application of the Superintendent and with the approval of the Lieutenant Governor in Council if

- the insurer has failed to exercise its corporate powers during any continuous period of four years;
- the insurer has not commenced business or gone into actual operation within four years after it was incorporated;
- the insurer has discontinued business for one year after it has undertaken insurance contracts within the meaning of the *Insurance Act*;
- the insurer's licence has been suspended for one year or more;
- the insurer has carried on business or entered into a contract or used its funds in a manner or for a purpose prohibited or not authorized by the *Insurance Act* or by its Act of incorporation or by any special Act applicable thereto; or
- other sufficient cause has been shown.

If such an order is granted the Minister may appoint a liquidator.

Under the *Corporations Act*, the Lieutenant Governor if sufficient cause is shown or if the corporation is in default under the *Corporations Information Act*, may cancel a corporation's letters patent.

The LGIC may revive the corporation on the application of an interested party.

Ownership

Ownership Requirements None

Ownership None

Corporate Governance

Unaffiliated Directors	There is no provision for unaffiliated directors, but provision is made for the election of policyholder directors, elected by participating policyholders (hold policies in the company for at least $2000 and may also be a shareholder).
Board Committees	If the board of directors is composed of six or more directors, the directors may pass a by-law authorizing them to elect from among their number an executive committee and to delegate to it any powers of the board, subject to the restrictions, if any, contained in the by-law or imposed from time to time by the directors. The Executive committee must consist of not fewer than three directors. The by-law establishing the executive committee must be approved by a vote of two-thirds of the shareholders at a meeting.
Standard of Care for Directors and Officers	Under the *Corporations Act*, the affairs of every corporation shall be managed by a board of directors. No explicit standard of care for directors is established.
Directors Qualifications	No person is eligible to become or shall be elected a director of a joint stock insurance company unless he or she is eighteen or more years of age and holds in his or her own name and for his or her own use and absolutely in his or her own right shares of the capital stock of the company upon which at least $500 has been paid into the capital account of the corporation. No undischarged bankrupt shall be a director, and, if a director becomes a bankrupt, he or she ceases to be a director.
Resignation/ Removal of Directors	No explicit provisions respecting the removal of directors.

Licensing of Domestic Entities

Licensing Requirements	Every insurer undertaking insurance in Ontario or carrying on business in Ontario must obtain and hold a license issued by the Superintendent. The Superintendent may determine and define the classes of insurance for which the license is granted. Exemptions to the requirement to be licensed are granted to – pension fund societies incorporated under the *Corporations Act;* – corporations that are federally incorporated fraternal societies; – a trade union in Ontario; or – mutual benefit societies. An insurer will not be granted a license unless it meets set capital requirements: • for joint stock life insurers – paid up capital and surplus of not less than $2 million or such greater amount as the Superintendent in the circumstances may require of which at least $1 million is paid up capital and $500,000 is unimpaired surplus; • for joint stock other than life insurers - paid up capital and surplus of not less than $3 million or such greater amount as the Superintendent in the

circumstances may require

- for non-joint stock life insurers (mutual insurance corporation, cash-mutual insurance corporation, reciprocal insurance exchanges or underwriter or syndicate of underwriters operating on the plan known as Lloyd's) – proof that the net surplus of assets overall all liabilities exceeds the amount for the paid in capital stock of joint stock insurance companies and that such net surplus of assets overall all liabilities together with the contingent liability of members exceeds that amount for the paid u capital and surplus of joint stock insurance companies;
- for non-joint stock, other than life insurers - proof that the net surplus of assets overall all liabilities exceeds the amount for the paid in capital stock of joint stock insurance companies and that such net surplus of assets overall all liabilities together with the contingent liability of members exceeds that amount for the paid u capital and surplus of joint stock insurance companies.

The Lieutenant Governor in Council may on a report of the Superintendent exempt other than life insurers from the minimum capital requirements if the insurer is only offering it services in Ontario or the insurer is offering special or limited services that the LGIC does not require higher capital requirements.

No Ontario incorporated and licensed insurer may undertake insurance business in another jurisdiction unless licensed do to so under the laws of that jurisdiction.

If the Superintendent does not grant a license the person affected by the decision may appeal the decision to the Financial Services Tribunal.

Licensing Approval The Superintendent will issue a license if satisfied that all the requirements of the *Insurance Act* and the *Corporations Act* have been complied with (and that the expenses of incorporation and organization including any commission payable in connection with the subscription for shares in the capital of the insurer are reasonable).

The Superintendent may refuse to issue a license where the name of the insurer is the same or similar to another insurer and this would likely deceive or mislead the public or if the name is objectionable on any public grounds.

The Superintendent may set a term for the license and impose, vary or revoke any conditions or limitations that the Superintendent considers appropriate. The insurer may appeal a decision of the Superintendent respecting imposition of a term or conditions to the Financial Services Tribunal.

Every insurer that has its head office outside of Ontario must file with the Superintendent an executed copy of a power of attorney.

Regulation of Extra-provincial Entities

Regulatory Approach All insurers operating in Ontario are subject to the same rules and treatment with respect to the requirement to be licensed to do business in Ontario, licensing requirements and reporting and examination requirements.

Restrictions and A license shall not be granted to a corporation that is incorporated under the

Limitations	laws of a province other than Ontario unless its head office and chief place of business is located in that province. Where the head office of an applicant for a license is located out of Ontario, a license will not be granted except on proof that the insurer has the ability to pay contracts at maturity.
Examination	Each year the Superintendent must undertake an annual examination of every licensed insurer (see "Inspection and Examination" section below), but the Superintendent has the power to rely on the examination of an insurer undertaken by another government. The Superintendent may also exempt an insurer from some or all of the annual statement and filing requirements or direct that an insure prepare a modified statement respecting the business of the insurer in Ontario only, in lieu of filing the annual statement of assets, liabilities, revenues and expenses of the insurer for the year. Where the office of an insurer at which an examination is made is outside of Ontario, the insurer shall pay for the costs of the examination.
Reporting and Records	Every licensed insurer is required to submit an annual report to the Superintendent (see "Inspection and Examination" section below),

Operations

Business Powers	Under the *Corporations Act,* a corporation, unless otherwise expressly provided in the Act or instrument creating it, has the capacity of a natural person. A corporation incorporated under the Act may exercise its powers beyond the boundaries of Ontario to the extent to which the laws in force where the powers are sought to be exercised permit, and may accept extra-provincial powers and rights.
Restrictions on Business Powers	[limits on type or extent of commercial and non-financial business]
Restrictions on Offices and Branching	Under the *Corporations* Act, a corporation shall at all times have its head office in Ontario.

Capital

Approach to Capital Adequacy	Minimum paid up capital and unimpaired surplus for joint stock companies and equivalent net surplus of assets over liabilities for non-stock insurers.
Capital Requirements	Authorized capital of an insurance company must not be less than $500,000.
Restrictions on Capital	***Where a company undertaking life insurance has insurance in force of less than $25,000,000 but has a surplus to policyholders of more than $500,000, the directors may pass a by-law authorizing an application to the Lieutenant Governor for the issue of supplementary letters patent decreasing its authorized, subscribed and paid-in capital by not more than 50%.***

Investment &

Lending

Approach to Investment and Lending

List of authorized investments and loans with some overall investment and lending limits for certain categories of investments or loans.

Investment and Lending Limits and Restrictions

The Act contains a detailed list of investments that an insurer incorporated or organized under the laws of Ontario may invest its funds:

- Government, including municipal, bonds, debentures, stock or other evidences of indebtedness
- Bonds issued or guaranteed by an international bank, the Inter-American Development Bank or Asian Development Bank
- Federal or provincial subsidy bonds
- Debentures secured by a statutory charge on real estate, plant or equipment
- Revenue bonds
- Bond secured by a mortgage
- Equipment trust certificates
- Debentures of specified, high yield corporations
- Guaranteed investment certificates
- Preferred and common shares
- Real estate mortgages where the investment does not exceed three-quarters of the value of the real estate or leasehold
- Guaranteed or insured real estate mortgages
- Real estate for the production of income, either alone or jointly with another insurer or loan or trust corporation, which is guaranteed by the government; the lease provides for net revenue sufficient to yield a reasonable interest return during the period and to repay 85% of the amount invested in that period not to exceed 30 year; and the total investment in one parcel of real estate and the leasehold does not exceed 2% of the book value of the total assets of the insurer
- Real estate for the production of income, either alone or jointly with another insurer or loan or trust corporation, which is *not* guaranteed by the government but the lease provides for net revenue sufficient to yield a reasonable interest return during the period and to repay 85% of the amount invested in that period not to exceed 30 year; or the total investment in one parcel of real estate and the leasehold does not exceed 2% of the book value of the total assets of the insurer
- Real estate for the production of income provided each parcel does not exceed 1% of the book value of the insurer and the aggregate of all such investments does not exceed 7% of the total assets of the insurer.

- Credit union term deposits or
- Mutual or pooled funds.

The Act also contains a list indicating how an insurer may lend its funds:

- for authorized securities
- for real estate mortgages where the amount of the loan does not exceed three-quarters of the value of the real estate or leasehold
- guaranteed real estate mortgages
- for securities received on reorganization, liquidation, or amalgamation.

Allowable investment and lending activities are subject to the following restrictions:

- an general insurer shall not invest or lend its funds on the security of its own shares or any other corporation transacting the business of insurance except for investments in the shares of a syndicate that is a member of The Canadian Insurance Exchange;
- a life insurer shall not invest in the shares of a life insurer, its own shares or except as allowed under the Corporations Act;
- an insurer shall not invest its funds in bonds, debentures or other indebtedness on which payment of interest or principal is in default;
- an insurer shall not act as an underwriter of securities or property of any kind;

and limitations:

- 10% limit of insurer's total assets in any one security or one corporation other than a government security
- 30% limit on the shares of a corporation, other than an authorized subsidiary;
- 25% limit of an insurer's total assets in common shares
- 10% limit of an insurer's total assets in real estate.

Investment in Subsidiary/ Affiliates

The Act specifically provides that an insurer may invest its funds in the fully paid shares of

- An insurer incorporated under the laws of Canada or a province, or outside of Canada
- A corporation incorporated to provide an insurer with advisory, management or sales distribution services in respect of life contracts or annuities
- A corporation incorporated to acquire, hold, maintain, improve, lease or manage real estate
- Any corporation incorporated to offer public participation in an investment portfolio and corporations incorporated to provide such corporations with advisory, management, or sales distribution services
- With the Superintendent's permission any corporation incorporated to carry on any business reasonably ancillary to financial services.

Related Party Transactions

Approach to Related Party

There are no explicit provisions respecting related party transactions under the *Insurance Act*.

Transactions

However, an insurer shall not knowingly make an investment, other than a loan on the security of a life insurance policy

- to a director or officer or spouse of the insurer
- to a substantial shareholder the of insurer
- in a corporation that is a substantial shareholder
- in a corporation which a director, officer, individual who is a substantial shareholder has a significant interest.

No director, officer shall accept directly or indirectly any fee, brokerage, commission, gift or other consideration for or on account of any loan, deposit, purchase, sale made by or on behalf of the insurer, or have a pecuniary interest.

Under the *Corporations Act*, every director of a company who is in any way directly or indirectly interested in a proposed contract or a contract with the company shall declare his or her interest at a meeting of the directors of the company.

Also under the *Corporations Act*, a director or a senior officer who is an "inside" (beneficially owns 10% or more of the voting rights attached to all equity shares of the company) must file with the Securities Commission a report disclosing the nature of their beneficial ownership. These reports are open to the public. Every insider who uses specific confidential information in a transaction relating to the capital securities of the company is liable to compensate a person for any loss suffered as a result of the transaction.

Allowable Transactions

The Minister on advice of the Superintendent and application of the insurer, may exempt from the investment prohibition any particular investment that the decision of the insurer to hold the investment is not influenced by the person and does not involve in any significant way the interests of that person apart from their interests as shareholder of the insurer.

Reporting and Audit

Required Reports

Under the *Corporation Act*, the auditor must make an annual examination of the books of the company and make a report on the financial statements. The auditor's report must be approved by the directors and the financial statements and auditor's report mailed to all shareholders.

The financial statements of an insurer must be prepared in accordance with the requirements of the *Insurance Act* and any balance sheet or other financial statement must conform to the annual report filed with the Superintendent in content and form. It is an offence for an insurer to show its financial condition differing from the financial condition shown in the annual statement filed with the Superintendent.

Scope of Financial Statements

No requirement for consolidated statements.

Powers and Duties of Auditors

An auditor must promptly report to the insurer and to the Superintendent any breach of the Act of which the auditor is aware, or is made aware of as a result of report form the person undertaking professional services. If the insurer does not rectify the situation in 30 days, the auditor must promptly report the failure to rectify to the Superintendent.

Under the *Corporations Act*, the auditor is entitled access to all information and records necessary to enable the auditor to undertake his or her work and is entitled to receive all notices and communications to shareholders and attend any meeting of shareholders.

Audit Committees

Composition No explicit requirement for an audit committee

Powers and Duties N/A

Removal/ Resignation of Auditor Under the *Corporations Act*, the shareholders may remove an auditor with a two-thirds vote of shareholders at a general meeting provided notice of this intent was given.

Other Provisions Under the *Corporations Act*, if for some reason an auditor is not appointed, the Minister may appoint an auditor and the company must pay for the auditor's expense.

The Superintendent may appoint an accountant to audit the books of an insurer under the Superintendent's direction, if the Superintendent believes that the records of the insurer are not kept in a manner to correctly show the experience of the insurer.

Regulatory Powers

Role of Elected Officials The Lieutenant Governor and Council is responsible for passing regulations, providing for certain exemptions to the legislation, and making appointments under the legislation. The LGIC may also require the Financial Services Tribunal to hold examine and report on any question that the LGIC believes requires a public hearing.

The Minister pays a role in appointments

Regulatory Framework

Regulatory Organization The Superintendent of Insurance appointed under the *Financial Services Commission of Ontario Act* is responsible for the administration of the legislation.

The Lieutenant Governor in Council must also appoint a director of arbitrations. The Director may appoint employees of the Commission to hold hearings on the Director's behalf. The Minister must appoint one or more committees to perform functions assigned to the committee or the Minister or the Superintendent. One of the committees will be responsible for recommending persons to conduct arbitrations in respect of disputes respecting entitlement to statutory accident benefits The Superintendent shall establish and maintain a roster of arbitrators from the persons recommended and the Director may only appoint arbitrators from this roster.

The Superintendent also has the power to appoint employees of the Commission or other person to act as mediators in disputes respecting as insured person's entitlement to statutory accident benefits.

Inspection/ Examination The Superintendent may examine (includes an inquiry appraisal, audit or inspection) any person licensed under the Act, and it is a condition of licensing that the person facilitate the examination. The person being examined must provide required reports and information and open and produce their records as required. A person undertaking the examination may enter any place at a reasonable time and remove or make copies of documents.

Every licensed insurer must each year prepare and deliver to the Superintendent a statement of the condition and affairs of the insurer for the preceding year (which must be accompanied by a report of an auditor prepared in a manner required by the Superintendent), including he assets, liabilities, revenues and expenses; the particulars of the business done by the insurer in Ontario during the year; such other information as the Superintendent considers necessary. The annual statement must be accompanied by an opinion by an actuary as to the adequacy of provisions made for unearned premiums, unpaid claims, and claims adjustment expenses.

The Superintendent may exempt completely, or in part, any insurer or category of insurer from any of the annual statement filing requirements.

Once each year, or more frequently if considered appropriate, the Superintendent must examine an insurers' annual statement and may make inquiries as necessary to ascertain the insurer's condition and ability to meet its obligations and whether the insurer has complied with the requirements of the Act.

Regulatory Powers

The Superintendent must determine all matters before him or her by order and may make an order subject to conditions. The Superintendent may make an interim order pending the final order. In determining any matter, the Superintendent may

- determine what constitutes adequate notice;
- conduct any inspection or inquiry that the Superintendent considers necessary;
- consider any relevant information obtained by Superintendent , provided he or she first gives the party the opportunity to explain or refute it.

Licensed persons and other person engaged in the business of insurance must on request furnish the Superintendent with full information relating to contracts of insurance, any settlement or adjustment, and respecting activities related to the business of insurance.

Each year the Superintendent must prepare for the Minister an annual report showing the particulars of business of each insurer ascertained from the insurer's annual report and other inspection and inquiry. In this report the Superintendent may increase or diminish the liabilities of insurers to the true and correct amounts ascertained by him or her in his examination and inspection.

The Superintendent may require an insurer to obtain an appraisal, or have an appraisal undertaken, of real estate or any other asset of the insurer where the Superintendent believes the stated or book value is too great.

The Superintendent has the power to suspend or cancel an insurer's license upon proof that an undisputed claim has remained unpaid for a period of 60 days. The license may be revived in claim paid within 6 months.

The Superintendent may also suspend or cancel an insurer's license on based on a report that

- the assets of the insurer are insufficient to justify continuance of business or ability to cover obligations;
- there exists a state of affairs that is or may be prejudicial to the interests of policyholders;
- the insurer has failed to comply with any provision of legislation or instrument of incorporation;
- the insurer's license has been suspended or cancelled by a government in Canada.

Where the Superintendent has taken control of an insurer's assets, the Superintendent will conduct its affairs and may appoint a manager to operate the business of the insurer. The Superintendent may apply to the court for an order winding up the insurer under the *Corporations Act*. The Superintendent may relinquish control to the insurer if the Superintendent considers it proper for the insurer to resume control or if the Superintendent believes that further efforts at rehabilitation are futile. The costs of rehabilitation shall be paid by all insurers of that class licensed to carry on business in Ontario.

At any time, the Superintendent may require an insurer to make a deposit with the Superintendent to be held by the Superintendent as a security for the Ontario contracts of the insurer and for any contracts in a reciprocating province. The insurer may appeal this order of the Superintendent to the Tribunal. If the insurer ceases to carry on business, a reciprocating province may submit an accounting of claims and liabilities to the Superintendent and the Superintendent may apply to court for directions regarding the administration of deposits of an insurer.

The Superintendent, or the Securities Commission, may apply to the court for a compliance order requiring that a person comply with a provision of the Act, a order, direction or undertaking under the Act, or any term or condition on its license.

Offences and Penalties

Types of Offenses

Every person is guilty of an offence who

- directly or indirectly furnishes false or misleading information to the Financial Services Commission or a life association responsible for regulating life insurance agents;
- knowingly makes a false or misleading statement or representation to an insure in connection with a policy;
- willfully fails to inform an insurer of a material change in circumstances in connection with a person's entitlement to a benefit;
- knowingly makes a false or misleading statement to an insurer to obtain payment for goods or services provided to the insurer;
- fails to comply with any requirement, order or direction made under the Act;
- fails to comply with any written undertaking of Superintendent or Tribunal or to association responsible for regulating life insurers;
- contravenes any term or condition imposed on a license.

Under the *Corporations Ac,* every corporation and every director or officer of the corporation acting on its behalf, who commits any act contrary to the Act, or fails or neglects to comply with a provision under the Act, is guilty of an offence.

Administrative Penalties

No provision for administrative penalties

Criminal Penalties

On conviction, a person is liable on first conviction to a fine of not more than $100,000 and on each subsequent conviction to a fine of not more than $200,000.

A person convicted of a general offence under the *Corporations Act* is liable to a fine of not more than $200.

Recourse

Right to Hearing

The Superintendent is not required to hold a hearing but must allow parties affected by a matter before him or her to make a written submission. The Superintendent has the power to vary or revoke a decision or order made by him.

Appeals Structure and Process

A person affected by a decision of the Superintendent (where an appeal is provided for under the Act) may appeal the decision to the Financial Services Tribunal. A notice of appeal must be filed with Superintendent within 30 days of decision. The Tribunal may confirm, vary or rescind or substitute its decision for a decision of the Superintendent. A decision of the Superintendent is not automatically stayed by an appeal but the Tribunal may grant a stay until it disposes of the appeal.

Within 15 days of receiving notice that the Superintendent plans to suspend or cancel its license, an insurer may appeal to the Tribunal and the Tribunal will hold a hearing before the Superintendent takes the action outlined in the notice. The Tribunal may suspend or cancel the license or order that the Superintendent take control of the assets of the insurer. Unless an appeal is provided under the Act, the decision of director or arbitrations, a mediator, the Superintendent or the Tribunal is final and conclusive. Where an appeal is provided for, an application for judicial review or appeal to court does not automatically stay the decision unless the court grants otherwise.

JURISDICTION – SASKATCHEWAN

Regulatory Approach

Activity or Entity	The focus of regulation is the entity engaged in insurance. The Act requires that any insurer must be licensed to transact insurance business in the province, and then sets out the regulatory framework for licensed entities.
Nature of Approach	All licensed insurers are generally subject to same level of regulation. Federally regulated insurers are exempt from the full application of some provisions and legislation for provincially incorporated mutual insurance companies may vary.

Corporate Framework

Incorporation

Method of Incorporation	One or more persons, being an individual or a body corporate, may incorporate a Saskatchewan insurance company under *The Business Corporations Act* by signing and delivering to the Director under that Act, articles of incorporation.
Incorporation Requirements	The Superintendent may require restrictions on the business of an insurance corporation to be included in its articles and any changes to the articles of a loan or trust corporation must be approved by the Superintendent (generally restrictions on the business of an insurer would be set out in conditions of license).
Incorporation Restrictions	The Superintendent may refuse to issue a license to an insurance company wherever incorporated.

Significant Changes

Types of Changes	Types of significant changes include: *Reinsurance* – transfer of a licensed provincial insurer's contracts of insurance or reinsurance of its contracts of insurance with any other insurer; *Transfer of Business* – transfer of all or any part of the business or property of a provincial insurer to any other insurer; Amalgamation – amalgamation of the property and business of a provincial insurer with any other insurer; *Continuation as a Federal Corporation* - with the consent of the Minister, a provincial insurer may apply for letters patent under the federal insurance legislation continuing the provincial insurer as if it were incorporated under an act of Parliament.
Requirements Related to Significant Changes	The transfer or reinsurance of contracts of insurance, the transfer of property and business, or the amalgamation of a provincial insurer with another insurer may be effected by agreement of the insurers subject to approval by the Minister. Notice of the insurer's intent to apply to the Minister for approval of an amalgamation, transfer or reinsurance and purchase must be made in the

Gazette 30 days before the application is made.

Before the agreement to amalgamate, reinsure or transfer assets is approved, the Minister may require the Superintendent to examine and report to the Minister on the general affairs of the interested insurers. The Minister will not approve the change if the capital of the combined insurers after the change will be impaired. Another condition for approving the amalgamation, reinsurance or transfer is that all the assets and liabilities of the "retiring" insurer will be assumed by the "continuing" insurer.

Dissolution

In general, a provincial insurer is subject to the liquidation and dissolution provisions of the provincial *Business Corporations Act.*

Under the insurance legislation, where the license of a provincial insurer expires and the insurer fails to get a new license or a new license is refused, or if its license if cancelled, the Minister may appoint a provisional liquidator to take charge of the company and wind it up. The provisional liquidator may make provision for reinsurance of the insurer's contracts of insurance. The provisional liquidator will make application to the court for a winding up order. All the expense associated with the provisional liquidator and winding up must be borne by the company. The Minister may direct that the costs be paid out of the deposit of the insurer held by the Minister.

The Superintendent may apply to the court for the winding up of a provincial insurer where:

- the insurer has failed to exercise its corporate powers during a continuous period of four years;
- the insurer has not commenced business or gone into actual operation within four years of the date of its incorporation;
- the insurer has discontinued business for one year;
- the insurer's license has been suspended for one year or more;
- the insurer has carried on business or entered into a contract or used its funds in a manner or for a purpose prohibited or not authorized by the *Insurance Act* or the *Companies Act*; or
- other sufficient cause has been shown.

In addition, under the insurance legislation, the Attorney General may apply to court for the winding up of provincial corporation where a provincial insurer

- does not go into actual operation within two years of the incorporation,
- has discontinued business for one year,
- has its license cancelled and a new license is not obtained within 60 days.

Before ceasing to do business in the province, an insurer must give the Superintendent one months notice and publish notice of its intention to cease business in two successive issues of the Gazette and local newspapers.

Ownership

Ownership

No requirements.

Requirements	
Ownership Restrictions	No restrictions.

Corporate Governance

Unaffiliated Directors	Publicly traded companies must have at least three directors of whom at least two must not be employees or officers of the corporation or its affiliates (Saskatchewan *Business Corporations Act)*. [There is no such restriction for mutual insurers.]
Board Committees	No requirements for specific board committees.
Standard of Care for Directors and Officers	Every director (and officer) must in carrying out his or her duties act honestly and in good faith with a view to the best interests of the company, and exercise the care, diligence and skill that a reasonably prudent person would exercise incomparable circumstances. (Saskatchewan *Business Corporations Act)*.
Directors Qualifications	The majority of directors of a provincial insurer must be Canadian residents; if no director is a resident of Saskatchewan, the corporation must appoint an attorney for service in the province (Saskatchewan *Business Corporations Act)*, A person is not qualified to be a director if they • are not an individual; • are less than eighteen years of age; • are found to be of unsound mind, • have the status of a bankrupt. *(Business Corporations Act)*.
Resignation/ Removal of Directors	The shareholders of a provincial insurer may by ordinary resolution at a special meeting of the provincial insurer remove a director(s) from office. A director who resigns or receives notice of a meeting called for the purpose of removing him or her from office, or where another person is to be appointed to fill the office of the director because of resignation or removal, is entitled to submit to the provincial insurer a written statement giving the reasons for the resignation or why they oppose the proposed action. The provincial insurer must distribute such a statement to shareholders. (Saskatchewan *Business Corporations Act)*.

Licensing of Domestic Entities

Licensing Requirements	No person may transact the business of insurance in Saskatchewan without being licensed under the Act as an insurer. The Superintendent is responsible for issuing licenses to insurers to authorize the insurer to transact the class or classes of insurance specified in the license. Every insurer on first obtaining a license must provide notice of its intention in two successive issues of the Gazette. A license will expire five years after the date on which it was issued.
Licensing Approval	The applicant for a license must file with the Superintendent a copy of its

instrument of incorporation, a copy of its last balance sheet and, if the head office is outside of Saskatchewan, notice of where its chief office in Saskatchewan is to be located.

The Superintendent will not issue a license

- before the Minister receives a deposit of approved securities in the case of a life insurer, a minimum of $50,000, in the case of an insurer who undertakes one or more classes of insurance other than life in Saskatchewan only, a minimum of $25,000 or, if it will undertake insurance in Saskatchewan and elsewhere, a minimum of $50,000;
- unless satisfied that all provisions of the Act as to subscriptions to capital stock, other financial standards, election of directors and other preliminaries have been met and that expenses of incorporation and organization are reasonable.

Every licensed insurer that has its head office outside of Saskatchewan must have a person appointed in Saskatchewan as the insurer's attorney for the purpose of receiving service and all notices from the Superintendent.

Regulation of Extra-provincial Entities

Regulatory Approach

Generally, extraprovincial insurers are subject to the same level and degree of regulation as provincial insurers, subject to some exceptions, including the investment and lending rules that only apply to provincial insurers. Additionally, federally incorporated and regulated insurers are exempt from certain other provisions in the legislation, including the requirement for filing of annual statements.

Every insurer operating in Saskatchewan must be licensed by the Superintendent to transact insurance business in the province. To be issued a license, an extraprovincial insurer must file a copy of its instrument of incorporation, a copy of its last balance sheet and, if the head office is outside of Saskatchewan, notice of where its chief office in Saskatchewan is to be located. A federal or foreign insurance company covered under federal regulation is not required to file the required incorporation documents with the Superintendent.

The Superintendent has the power to enter into agreements with any other government or regulatory authority for the purpose of administering the Saskatchewan legislation or similar legislation of that other jurisdiction. This includes authorizing the Superintendent to perform the duties and responsibilities of that other jurisdiction or authorizing the government or regulatory authority of that other jurisdiction to exercise the Superintendent's powers.

Restrictions and Limitations

Superintendent must consent to the use of a name by the extraprovincial insurer.

Examination

Extraprovincial insurers are subject to audit, examination and inspection by the Superintendent under a general provision designed to ensure that the Superintendent has the power to investigate any person governed by the legislation to determine whether they are complying with the legislation.

Reporting and Records

Every insurer, including an extraprovincial insurer is required to file an annual audited financial statement with the Superintendent. In lieu of this annual audited financial statement, federal and federally regulated insurers may be permitted by the Superintendent to prepare a modified statement respecting just their business in Saskatchewan.

An extraprovincial insurer, similar to provincial licensed insurers may be required to file other reports with the Superintendent (see "Reporting and Audit – Required Reports").

Operations

Business Powers	A provincial insurer may carry on the business of insurance which means the "undertaking by one person to indemnify another person against loss or liability for loss in respect of certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event and includes life insurance"
Restrictions on Business Powers	A provincial insurer incorporated under the *Companies Act* for the purpose of carrying on insurance business must not carry on any business other than insurance business.
Restrictions on Offices and Branching	No specific restrictions.

Capital

Approach to Capital Adequacy	Minimum and ongoing capital requirements for an insurer are determined and implemented by conditions on the insurer's license.
Capital Requirements	The Superintendent has determined that regulatory capital is $5 million, but may be increased or decreased depending on the business plan and number of jurisdictions the insurer is operating in.
Restrictions on Capital	The Minister will not approve an agreement for reinsurance or transfer of insurance contracts, a transfer or purchase of business and property, or the amalgamation of provincial insurers, if the capital of the combined insurers after the change would be impaired.

Investment & Lending

Approach to Investment and Lending	The general approach is a list of "allowed" types of investments in which a provincial insurer may invest its funds, subject to specified investment and lending limits.
Investment and Lending Limits and Restrictions	Permitted investments include: • bonds, debentures and stocks and other evidences of indebtedness unconditionally guaranteed of the government of Canada, a province, a municipality or school corporation in Canada, the United Kingdom or the USA; • bonds, debentures, or preferred shares of a corporation that has paid a dividend in each of last five years preceding date of investment equal to a specified annual rate or 4% of the average value or of a public utility corporation; • first mortgages up to 60% of their value;

- securities in which trustees are by law permitted to invest;
- real property for its own use and benefit provided the total amount of all such investments does not exceed 5% of the insurer's total investment.

An provincial insurer must not invest it assets in bonds, debentures and stocks

- where the payment of principal or interest is in default;
- where the insurer would, after the investment, hold more than 10% of the total securities of any one corporation that is public utility corporation, or a corporation that has issued dividends in last five years, or where the total amount invested in such assets would exceed 25% of the insurer's assets;
- where the total amount invested by the insurer in securities of all corporations would exceed 5% after the investment; or
- where the total amount invested in first mortgages or securities in which a trustee may invest would exceed 25%.

The Superintendent has the authority to order a provincial insurer to dispose of investments not permitted under the legislation or in excess of the limits. The insurer has 60 days to dispose of and realize on the assets and if the amount realized from the sale is less than the amount paid by the insurer the directors are jointly and severally liable for the payment to the insurer of the amount of the deficiency.

Uninvested funds must be kept on deposit in a bank.

Investment in Subsidiary/ Affiliates

A provincial insurer may invest in certain permitted corporations subject to specified limits and conditions (see above "Investment and Lending Limits and Restrictions").

Designated provincial insurers (as specified by regulation) may invest in the shares of permitted corporations outside the specified limits provided the investment is one that a reasonable and prudent person would make with respect to a portfolio of investments and loans with a view to avoiding undue risk and obtaining a reasonable return.

Related Party Transactions

Approach to Related Party Transactions

No specific related party provisions. However, a provincial insurer must not lend any of its funds to any director or officer or spouse of a director or officer, or to a company if more than one-half the shares of the company are owned by a director or officer of the insurer or a spouse or a child of the director or officer, or any combination of such persons.

As well, under the *Companies Act* a director must disclose any interest the director may have, direct or indirect, in a proposed contract or contract of the company.

Allowable Transactions

A life insurance company may issue contracts of life insurance to directors and officers and the spouse and child of directors and officers.

Reporting and Audit

Required Reports

Annually, every insurer must prepare and deliver to the superintendent audited financial statements on the conditions and affairs of the insurer for that year.

The Superintendent has the power to make corrections to the annual statements made by insurers in the Superintendent's annual report to the Minister (See "Regulatory Powers").

Every licensed insurer authorized to undertake fire insurance must when required by the Superintendent prepare and file a specified statement outlining the premium income and losses experienced within Saskatchewan for the calendar year.

Every insurer licensed to undertake automobile insurance must prepare and file a record of its automobile insurance premiums and its loss and expense costs in the province, when required by the Superintendent or a statistical agency designated by the Superintendent.

At any time the Superintendent may require an insurer to prepare and file a report in the form and containing the information required by the Superintendent.

Scope of Financial Statements

Investments in subsidiaries or other corporations must be set out separately from the other assets in the balance sheet of a provincial insurer.

Powers and Duties of Auditors

Under the insurance legislation, auditors are responsible for auditing the financial statements of the insurer and making a report on them in the manner required by the Superintendent.

Auditors have the right of access to all books and accounts of the insurer; the right to require information and explanation from directors and officers and the right to be present at any meeting of the insurer where the accounts examined by the auditor are to be presented and provide an explanation of the accounts if required.

The auditor is entitled to receive notice of every meeting of the audit committee and to attend and be heard. The auditor may call a meeting of the audit committee.

The auditor must notify the directors if he or she becomes aware of a material misstatement in the financial statements of the company. The directors are required to prepare and distribute a revised annual financial statement in these circumstances.

Audit Committees

Composition

Under the *Business Corporations Act*, a publicly traded corporation must have an audit committee, and any other corporation may have one. The audit committee must be composed of three directors, the majority of which must not be officers or employees of the corporation or a subsidiary of the corporation.

Powers and Duties

The audit committee is responsible for reviewing the financial statements of the provincial insurer.

Removal/ Resignation of Auditor

The auditor of a provincial insurer may be removed by ordinary resolution of the members of the insurer.

An auditor who resigns or receives notice of a meeting of shareholders called for the purpose of removing the auditor or appointing another person as auditor may submit to the insurer a written statement giving the reasons for his or her resignation or why he or she opposes the proposed action.

Other Provisions

Every insurer licensed to undertake fire insurance is required to keep a record of its premium income derived from its risks in Saskatchewan. On a report of the Superintendent that such records are not kept in the correct manner, the Minister may nominate an accountant to audit the books and records of the insurer and provide instruction to officers to enable them to keep the books correctly in the future.

Regulatory Powers

Role of Elected Officials

The Minister is responsible for making major regulatory decisions under the insurance legislation, including

- ordering the Superintendent to prohibit the use of unfair and deceptive insurance policies or endorsements;
- nominating an accountant to make an audit of an insurer's books, if the Superintendent has found the insurer licensed for fire insurance is not properly maintaining its accountants;
- approving the transfer or reinsurance of insurance contracts, the transfer of business and property or the amalgamation of a provincial insurer;
- making reports to the Lieutenant Governor in Council respecting the suspending or canceling of licenses; and
- the administration of deposits (required on issue of a license).

The Lieutenant Governor in Council plays a role in the suspension and cancellation of insurers' licenses. Where the Superintendent finds the assets of an insurer to be insufficient to justify its continuance or that it has contravened a provision of the legislation or its charter, the Superintendent must make a report to the Minister. After a hearing, if the Minister concurs with the Superintendent, the Minister may make a report to the Lieutenant Governor in Council who may suspend or cancel a license or place conditions or limits on the license. Where the Superintendent is satisfied that a licensed insurer is operating in a foreign jurisdiction without being authorized by that jurisdiction, the Lieutenant Governor in Council, on a report of the Superintendent, may suspend or cancel the license of the insurer.

Where the license of an insurer is suspended or cancelled it may be revived by the Minister if the insurer remedies the default or deficiency.

Regulatory Framework

Regulatory Organization

Under the insurance legislation, the Superintendent and Deputy Superintendent of Insurance are responsible for the general supervision of the business of insurance in Saskatchewan.

The recently passed *Saskatchewan Financial Services Commission Act* (assented to Juy 10, 2002) integrates the office of the three financial services regulators – the Financial Institutions Section of the Consumer Protection Branch, the Pensions Benefits Branch and the Saskatchewan Securities Commission – into a single financial services regulatory organization, the Saskatchewan Financial Services Commission.

Inspection/ Examination

The Superintendent must annually inspect in person the head office of every licensed provincial insurer (other than a mutual benefit society with less than 300 members) and examine the condition and affairs of the insurer. The Superintendent may make a report to the Minister respecting matters requiring the Minister's attention following such inspection. The Superintendent may, if the circumstances warrant, inspect and examine an insurer less than once a year, but not less frequently than once in every three years.

The Superintendent must prepare an annual report for the Minister covering the business of each insurer based on statement filed by the insurer and inspections and inquiries made by the Superintendent. The Minister at his or her discretion may publish this report. In this report the Superintendent may make corrections to the annual statements made by insurers and will only include assets that a provincial insurer is authorized to make investments in under the legislation.

Regulatory Powers

The Superintendent has a wide range of regulatory powers including:

- the ability to direct a person to provide the superintendent with information for purposes of legislation;
- the ability to examine persons under oath and take and receive affidavits;
- bring actions and institute proceedings for the enforcement of any provision of the legislation;
- appointment of representatives to carry out the Superintendent's responsibilities and retaining experts to assist the Superintendent in carrying out his or her responsibilities;
- the power of inquiry with respect to an insurer regarding the insurer's contracts or financial affairs;
- access to books and records of an insurer, which the insurer must provide on request;
- the ability to require a provincial insurer to undertake an appraisal, or cause an appraisal to be undertaken, of real estate assets, including parcels of land, held by insurer if the Superintendent is of the opinion that the value of the real estate assets in the annual statement of the insurer provided to the Superintendent is too great;
- the ability to make, or cause to be made, an appraisal of the security taken for any investment by an insurer if it appears to the Superintendent that the value of the securities shown on the books of the insurer is too great;
- the suspension or cancellation of a license of an insure who fails to pay undisputed claims within 60 days or make a further deposit of approved securities to the minister within 30 days of being required to do so;

In addition, any provincial insurer must immediately inform the Superintendent of any action or proceeding brought with respect to the insurer and the Superintendent has the right to appear and be heard at the proceeding. A licensed insurer must immediately notify the Superintendent if its authority to do business in a foreign jurisdiction is suspended or cancelled.

The Superintendent also has the general power to audit, examine, inspect and investigate any person governed by the legislation for the purpose of ascertaining whether the person is in compliance with the legislation. This includes entering and inspecting commercial premises, requiring information and assistance from the person and taking copies of documents and records. If as a result of an audit, examination, inspection or investigation, the Superintendent has reason to believe that a person may be in contravention of the legislation, the Superintendent may issue a warning. The court may on oath of the Superintendent issue a warrant allowing for the Superintendent to enter, search and seize information. The Superintendent has the power to appoint a receiver and order a person to hold funds or other property and where the Superintendent makes such an order, he or she must apply to the court within 15 days for a court order continuing the Superintendent's order.

As well, the Superintendent has the authority to issue cease and desist or compliance order where a person is not in compliance with the act or may be acting in a way that will put them in non-compliance with the act, or a person is acting in a way as to harm the interests of consumers. The Superintendent may apply to the court for an order of compliance.

Offences and Penalties

Types of Offences

The following are offences under the act:

- Contravention of any provision of the legislation;
- Making a false or misleading statement;
- Soliciting insurance on behalf of an unlicensed insurer.

Criminal Penalties

A person convicted of an offence is liable to

- in the case of an individual, a fine not exceeding $500,000 or to imprisonment of a term not exceeding 12 months, or both;
- in the case of a corporation, a fine not exceeding $1,000,000.

In addition to the penalty, the court may issue a compliance or cease and desist order with respect to the matter the person was convicted.

Administrative Penalties

Any person who is late in making or filing a report or statement is liable to a penalty of $500 plus $10 per day after the 10 days that the default continues.

Every insurer and general insurance agent is liable to a penalty of $250 at the end of each calendar year for each unlicensed agent from which it or he or she accepted an application for insurance.

On receipt of a notice from the Superintendent demanding payment of a penalty respecting the above, the insurer or agent must immediately pay the penalty to the Superintendent. The penalty is recoverable by the crown and may be recovered in any manner provided for under the *Financial Administration Act*.

Additionally, where the Superintendent is satisfied that a person has contravened a provision of the act, the Superintendent may impose

- an administrative penalty of up to $100,000;
- a private or public reprimand;

- that the person pay the cost, to a maximum of $100,000, of producing material as specified by the Superintendent to promote education or knowledge in areas related to consumers and the activities of insurers.

As well, after providing a person with the opportunity to be heard, the Superintendent may order a person to pay the costs of an audit, examination, inspection or investigation under the Act.

The superintendent may file a certificate with the court certifying the amount of an administrative penalty or the amount due in costs and that the person is required to pay. A certificate filed with the court has the effect as if it were a judgment of the court for the recovery of the debt.

Recourse

Right to Hearing

Where the Superintendent intends to impose an administrative penalty, a reprimand or require a person to cover the cost of the production of educational material, the Superintendent must give notice to the person and that person has 30 days in which to make representations to the Superintendent respecting whether the penalty should be imposed or not. The Superintendent may confirm or vary his penalty and serve notice on the person.

Where the Superintendent has issued a cease and desist or other order without giving the recipient an opportunity to be heard, the Superintendent provides the right to be heard within 15 days of the issue of the order.

Appeals Structure and Process

An appeal to any decision of the Superintendent may be made to the court but on a question of law only. [An exception to this is a decision made by the Superintendent on appeal from the Insurance Council respecting the refusal to issue or reinstate or to suspend or cancel an insurance agent's license.]

An appeal does not stay the Superintendent's order or decision.

Market Conduct

JURISDICTION – FEDERAL GOVERNMENT

Marketing of Financial Products and Services

Tied Selling

No provisions relating to tied selling in insurance, trust and loan and credit cooperative legislation.

Rebating

The Trust and Loan Companies Act provides that if a company has a deposit account in the name of a customer and the customer by telephone requests the opening of another deposit account, the customer may within 14 business days after the deposit account is opened by telephone, close the account without charge and in such case is entitled to a refund of any charges related to the operation of the account, other than interest charges, incurred while the account was open. [Regulations provide that for account openings by telephone request, customers must be informed that they may within 14 business days after a deposit account has been opened, close the account without charge and that they are entitled to a refund of any charges related to the operation of the account, other than interest charges, incurred while the account was open.]

The insurance, trust and loan and credit cooperative legislation provide for a rebate of borrowing costs where a company or retail association makes a loan (not secured by a mortgage on real property) that is required to be repaid on a fixed future date or by installments, if there is a prepayment of the loan. In these circumstances, the company or association must rebate to the borrower a portion of the charges included in the cost of borrowing in respect of the loan (other than the interest or discount applicable to the loan.)

Disclosure Requirements

Disclosure of Marketing Arrangements

Regulations under the insurance company legislation provide for the disclosure by companies of networking arrangements, including the name of the principal for whom the company is acting as agent and whether any commission is being earned by the company when acting as an agent.

Disclosure in Advertising

The insurance, credit cooperative and trust and loan legislation contains provisions requiring disclosure in advertisements in Canada relating to loans, credit cards, payment cards, and charge cards. There are provisions requiring disclosure of the cost of borrowing in respect of loans and the disclosure of other information in respect of credit cards, payment cards and charge cards. In addition, there are provisions requiring disclosure in respect of the opening and advertising of deposit accounts, the charges and rates of interest applicable to such accounts and the manner in which the amount of interest is to be calculated. Complaints respecting a federal financial institutions compliance with these provisions may be referred to the Financial Consumer Agency of Canada.

Confidentiality

In the Insurance Business (Trust and Loan Companies) Regulations, there are provisions prohibiting, with limited exceptions, trust and loan companies

Requirements

from providing directly or indirectly to an insurance company, agent or broker, information respecting a customer or employee of the trust or loan company in Canada. There are also provisions dealing with the provision of information respecting customers or employees by subsidiaries of the trust or loan company.

Prohibition – Unfair Contracts

No specific provisions respecting unfair contracts in insurance, credit cooperative and trust and loan legislation. [Section 346 of the Criminal Code prohibits an agreement with a "criminal interest rate". (This term is defined in the Criminal Code).]

Restrictions on Terms

The Trust and Loan Companies Act restricts the use of the word "fiduciare", "fiduciary", "fiducie", "trust", "trustco", "loan", "loanco" or "prêt" or words of import equivalent to these words in the name of a federally incorporated entity.

Section 47 of the Insurance Companies Act restricts the use of the word "assurance", "assurances", "insurance" or "lifeco" or any words of import equivalent to these words in the name of a federally incorporated entity.

Substitute Action

No provision,

Other Market Conduct Rules

Networking

Both the *Insurance Act* and the *Trust and Loan Companies Act* specifically provide that companies may network by

- acting as an agent for any person in respect of any service that is provided by a financial institution, a entity that the company is permitted to invest in, or a prescribed entity;
- entering into an arrangement with any person in respect of the provision of that service; and
- referring any person to such financial institution or entity.

Consumer Complaints and the Financial Consumer Agency of Canada

The Agency is responsible for receiving complaints from consumers of financial services respecting cost of borrowing provisions and other obligations of federal financial institutions under consumer provisions.

Federal financial institutions are required to establish procedures for dealing with complaints and designate an officer or employee of the company to be responsible for implementing the procedures and for receiving and dealing with complaints. A financial institution must file a copy of its procedures with the Commissioner of the Agency and must inform all person receiving or requesting a product of service on how to make a complaint. The Commissioner may require that a financial institution furnish it with additional information. The commissioner may also from time to time and at least annually make an examination of a financial institution to ascertain its compliance with the applicable consumer provisions and make a report to the Minister.

The Agency must report annually on financial institutions' procedures for dealing with complaints and the number and nature of complaints received by the Agency.

Compliance or Restraining Order – consumer provisions

If a federal financial institution does not comply with an applicable consumer provision, the Commissioner, or the complainant (a proper person to make an application) may, in addition to any other right the person has, apply to a court for an order directing the financial institution to comply with, or restraining the financial institution from acting in breach of, the consumer provision.

Regulation of Insurance Intermediaries

Licensing Requirements	N/A
Exemptions to Licensing	N/A
Licensing Regime	N/A
Licensing Authority	N/A
Powers of Licensing Body	N/A
Investigation and Discipline	
Grounds for Investigation	N/A
Investigation Powers	N/A
Sanctions and Penalties	N/A
Recourse	N/A

JURISDICTION – ALBERTA

Marketing of Financial Products and Services

Tied Selling

Insurer and Insurance Agents

No insurer, insurance agent or adjuster may engage in the following prohibited tied selling activities:

- where an insurer or insurance agent is asked to sell insurance to a person, Informing the person that the person must purchase another product or service, including an insurance policy from the insurer or insurance agent, before the insurance requested ill be undertaken;
- where an insurer is asked to make a loan to a person, informing the person that the person must purchase a product or service, including an insurance policy, from the insurer before the loan will be made.

Restricted Insurance Agents

A person with a restricted insurance agent license may not when offering a loan inform a person that the person must, or require the person to, purchase insurance before the loan is made. A person with a restricted insurance agent license may, however, require insurance to protect against default if the person is not directed to a particular provider and the insurance is from an insurer licensed to do business in Alberta.

Financial Consumers Act

Suppliers, agents and financial planners may not put undue pressure on consumers to invest in named financial products.

Fair Trading Act

Exerting undue pressure or influence is an unfair practice.

Rebating

Rebating allowed but agents may not share commissions or other payments with persons other than licensed insurance agents.

Disclosure Requirements

Disclosure of Marketing Arrangements

Insurers may not indicate premiums other than the amount set in the policy.

Insurers may not charge additional fees unless the insured has agreed in writing.

Licensed intermediaries that represent two or more businesses must disclose to the consumer, which business the intermediary is representing.

Restricted insurance agents must disclose a summary of insurance policy provisions at the time of the insurance application, and in the case of credit-related insurance, a right to rescind the insurance within 10 days, as well as the nature of the seller's compensation. Restricted agents must ensure that insureds are aware that they are contracting with an insurer and not the restricted agent in respect of the insurance coverage.

Disclosure in

Every licensed insurer must ensure that its name as set out in its license is

Advertising

shown in a conspicuous manner in all of its advertising, correspondence and contracts of insurance. No licensed intermediary may use a name other than the one with which they are licensed. No licensed intermediary may indicate in an advertisement that they may offer the services that require licensing, unless they are licensed.

No person may hold itself out as a registered trust corporation unless it is registered and no promoter or other person acting on behalf of a corporation that is not registered may undertake business in Alberta.

False or deceptive statements by a trust or loan corporation are an offence.

Under the *Financial Consumers Act*, corporate particulars, rights to cancellation, compensation disclosure and compensation plans must be disclosed before investing in a named financial product.

Under the *Fair Trading Act,* no person may advertise where the advertisement contains an unfair practice. An unfair practice includes entering into a transaction where the supplier knows the consumer will not receive a benefit, imposing one-sided transactions, and deception or misrepresentation.

Confidentiality Requirements

Under the *Financial Consumers Act,* personal financial information must be used for the purpose for which it was given unless the consumer specifically consents to another use, with some exemptions such as for credit-granting and as required by law.

Under the *Insurance Act,* personal information given to restricted insurance agents may not be used for another purpose or released to another person without specific consent, with some exceptions.

Prohibition – Unfair Contracts

The Minister may, where in his or her opinion a form of policy or contract of insurance or form of application, endorsement, or advertisement is unfair, misleading or deceptive, prohibit an insurer or insurance agents from using that form.

Restrictions on Terms

With respect to the guarantee for credit union deposits, a person must not make a representation that anything other than a deposit made with a credit union is guaranteed under the Act or by the Deposit Guarantee Corporation.

No registered trust or loan corporation shall

- make, print, publish or circulate any statement or representation that its solvency or financial standing is vouched for by the Government of Alberta or the Minister;
- make, publish or distribute any statement that the repayment by the corporation of any deposits or investment money received by the corporation is guaranteed by the Crown or Government of Alberta.

Substitute Action

No provision for regulator to bring substitute action on behalf of customers.

Life Insurance Replacement

An insurer or insurance agent must not attempt to induce a policy holder either directly or indirectly to effect a replacement of a contract where it would be detrimental to the interests of the insured.

Where a replacement of a contract would be detrimental to the interests of the policyholder, the insurance agent recommending the policy must make every reasonable effort to ensure the existing policy is maintained and where the policy holder initiates the replacement, the agent must explain the advantages and disadvantages to the policy holder that would result in the replacement.

An agent who becomes aware that an existing policy should be amended because of a change in circumstances must endeavor to have the existing contract amended or replaced by the insurer who issued it.

Prior to making a replacement application for life insurance, an agent must have the prospective policy holder sign a disclosure statement in a form required by the Minister, indicating receipt of the disclosure statement by the prospective policy holder.

Other Market Conduct Rules

It is an offence for an insurer, insurance agent or adjuster to make a false or misleading statement, representation or advertisement, engage in a prohibited tied selling practice, committing an unfair, coercive or deceptive practice, making any statement or representation or committing an act prohibited under the Act or making a misleading or false statement to induce or attempt to procure a person to forfeit, surrender or allow a policy of insurance to lapse.

An insurer, insurance agent, or insurance adjuster must advise the insured in writing that the insured may have repairs estimated and completed by the service provider of the insured's choice, except where the insurer exercises its right to undertake the repairs. The insurer, insurance agent or adjuster may recommend a particular service provider to the insured.

A person has 10 days after receiving a life insurance policy that the person has bought, or longer period specified in the contract, to rescind the contract of life insurance and receive from the insurer a refund of the whole premium paid under the contract.

Premium refunds must be prorated if an insurer terminates a contract and may be short-rated if an insured terminates but the insured must be provided with a table showing the short-rate calculation.

Premium payments to an agent are deemed to be paid to the insurer, the agent is deemed to be trustee in respect of those payments, and the insurance agent is deemed to be legal agent of the insurer for that purpose.

The Minister may adopt as regulation, with or without modification, industry guidelines, respecting ethical, trade or operational practices.

Under the *Loan and Trust Corporations Act,* the Minister may require a passing of accounts in Court in respect of common trust funds and shall represent beneficiaries in Court, unless those persons have legal counsel or represent themselves. Where an extraprovincial trust corporation intends to pass an account outside Alberta, the corporation must provide notice to Alberta beneficiaries in accordance with the regulations.

Under the *Fair Trading Act*, negative option practices are prohibited in Alberta and cost of credit disclosure for deposit-taking institutions is regulated.

Regulation of Insurance Intermediaries

Licensing

No business may act or offer to act as an insurance agent in respect of a

Requirements

class of insurance unless the business holds an insurance agent's certificate of authority for that class of insurance.

An individual may not act or offer to act as an insurance agent in respect of a class of insurance unless the individual

- is an employee or independent contractor of a business that holds a insurance agent's certificate of authority for that class of insurance, or a restricted insurance agent's certificate of authority for that class of insurance, or
- is an employee of an insurer and that employee holds a insurance agent's certificate of authority for that class of insurance.

An individual may act as an insurance agent for more than one business but must obtain a separate insurance agent's certificate of authority for each business the individual represents, unless that individual is an employee of an insurer and then may only act as an insurance agent for that insurer and its affiliates (except for life insurance agents, unless they can not negotiate life insurance on behalf of the applicant from the licensed company they work for).

The Minister may issue a restricted agent's certificate of authority to a financial institution or a business that operates a transportation company, a travel agency, an automobile dealership, or other prescribed enterprise.

The Act also provides for "special brokers" licenses that may be issued to a person who holds an insurance agent's certificate of authority to undertake insurance that cannot be obtained from licensed insurers. A licensed special broker must on a monthly basis report to the Minister on the insurance activities undertaken by the broker.

Agents must be screened by the insurer before they can be licensed and this has been interpreted as setting up a liability on the part of the insurer for that agent's actions.

Restricted agents and insurers with which they contract must ensure that personnel marketing insurance are knowledgeable.

Use of the term broker is limited to agents who have contracts with two or more insurers.

Exemptions to Licensing

A member of a fraternal society other than a member who receives a salary for acting as an insurance agent and who acts of offers to act as an insurance agent only for society members is not required to obtain an insurance agent's certificate of authority.

A credit union and loan and trust corporation may not act as an insurer, insurance agent or adjuster. However, a credit union, or loan or trust corporation may hold a restricted agent's certificate of authority and is authorized to act as an insurance agent to the extent permitted by the certificate.

Licensing Regime

Every business that holds an insurance agent's certificate of authority

- for life insurance, must have a designate representative for life insurance who meets prescribed requirements and who is recommended by the life insurance company that recommended that the business be issued an insurance agent's certificate of authority;

- for general insurance, must have a designate representative for general insurance who meets prescribed requirements and who is recommended by the licensed insurer that recommended that the business be issued an insurance agent's certificate of authority
- for accident and sickness insurance, must have a designate representative for accident and sickness insurance who meets prescribed requirements and who is recommended by the licensed insurer that recommended that the business be issued an insurance agent's certificate of authority

Licensing Authority The Minister is responsible under the Act for issuing insurance agent's or adjuster's certificates of authority. This may be delegated to an Insurance Council. The Act provides for four Councils: the Alberta Insurance Council, the General Insurance Council, the Life Insurance Council, and the Insurance Adjuster's Council

Powers of Licensing Body The Councils do not have authority for rule-making. Standards and requirements for insurance agent's and adjuster's certificates of authority are set by the Minister and regulation.

Investigation and Discipline

Grounds for Investigation Grounds for investigation by the Minister include: fraud, misrepresentation, deceit, untrustworthiness, or dishonesty, contravention of the legislation or similar legislation in another jurisdiction, failure to pay a premium, placing insurance with an insurer not licensed in Alberta without complying with the rules respecting unlicensed insurance, or demonstrated incompetence.

Investigation Powers The Minister may direct a holder or former holder of a certificate of authority to provide the Minister within a reasonable time any information specified in the Minister's direction relating to matters constituting grounds for an investigation. The Minister may apply for a court order that the person provide the information required by the Minister.

Sanctions and Penalties If the Minister is satisfied that the holder or former holder of a certificate of authority has been guilty of fraud, misrepresentation, deceit, untrustworthiness, or dishonesty, has contravened the legislation or similar legislation in another jurisdiction, has failed to pay a premium, has place insurance with an insurer not licensed in Alberta without complying with the rules respecting unlicensed insurance, or has demonstrated incompetence, the Minister may revoke, suspend or refuse to renew the certificate and impose a penalty of up to $250.

If the Minister is satisfied that an insurance agent or adjuster employed by an insurer has committed an unfair practice such as making a false or misleading statement, engaging in prohibited tied selling or committed an unfair, coercive or deceptive practice, the Minister may order that insurer ensure the employee ceases to act as an agent or adjuster.

Recourse The appeal of a Minister's decision to refuse to issue, renew or to impose terms and conditions or to revoke or suspend a certificate is established by regulation.

Regulations provide that the right of appeal is through the Insurance Council Appeals Board. A person affected by a decision must submit notice of appeal within 30 days to the Superintendent who notifies the Minister. If the appeal involves the revocation or suspension of a certificate of authority the decision to revoke or suspend is stayed until the appeal is heard.

The Minister must within 30 days of receiving the notice of appeal select members of the Appeals Board to form a panel to decide the appeal. The date for the hearing must be within 30 days after the last panel member is selected. The panel may confirm the decision, or vary the decision and cancel a penalty.

JURISDICTION – ONTARIO

Marketing of Financial Products and Services

Tied Selling	**[any rules and restrictions?]**
Rebating	**[any rules and restrictions?]**
Disclosure Requirements	
Disclosure of Marketing Arrangements	[requirements if any to disclose affiliations and marketing relationships] A life insurance agent must not make a false or misleading statement, coerce a prospective buyer of life insurance through a professional or business relationship or otherwise give preference with respect to a policy of life insurance that would not otherwise be given, or hold himself out in a way that is misleading in respect of the insurers on whose behalf the agent acts.
Disclosure in Advertising	The Ontario loan and trust legislation, credit union legislation and insurance legislation contains provisions requiring cost of borrowing including disclosure in advertising of the costs of borrowing and required rebates.
Confidentiality Requirements	A credit union and its subsidiaries are prohibited from directly or indirectly giving an insurer, agent or broker information about the members or employees of a credit union.
Prohibition – Unfair Contracts	The Superintendent may require an insurer to file with him or her any form of policy used by the insurer and if the Superintendent considers that the policy is unfair, fraudulent, or not in the public interest the Superintendent may prohibit the insurer from using it; this decision of the Superintendent may be appealed to the Financial Services Tribunal.
Restrictions on Terms	[restrictions/prohibitions if any on use of terms including use of term guarantee or deposit?]
Substitute Action	[ability for regulatory to bring substitute action on behalf of customers?]
Life Insurance Replacement	A life insurance agent may not offer inducement or use coercion or undue influence in order to control, direct or secure insurance business, or to induce or attempt to induce, contrary to the insured's interests, the lapse or surrender of a contract of life insurance and its replacement. A life insurance agent must not make or deliver an incomplete comparison of any policy with that of another insurer in the solicitation of insurance. Where a life agent replaces a contract of life insurance, the agent must obtain a signed disclosure statement from the applicant for life insurance and provide a copy of this disclosure statement to the insurer.
Other Market Conduct Rules	*Unfair and Deceptive Practices* The Act contains a general prohibition against unfair or deceptive acts or practices (regulations provide an extensive definition of what constitutes an unfair or deceptive practice). The Superintendent has the power to examine and investigate the affairs of any person engaged in the business of insurance to determine whether the person is engaging in, or has engaged in an unfair of deceptive practices. Where the Superintendent plans to

issue a cease and desist order the Superintendent will provide notice to the person and the person has 15 days to request a hearing before the Financial Services Tribunal. If the Superintendent believes that the interests of the public may be prejudiced or adversely affected by a delay in issuing a permanent order the Superintendent may have the order take effect immediately.

Networking

An insurance company may act as an agent for any person in respect of the provision of any service that is provided by a financial institution, may enter into an arrangement with any person in respect of the provision of that service, and make referrals to these persons.

Insurance Limitations

- An credit union may require insurance be place by a member for the security of the credit union, but is prohibited from exercising any pressure on a member to place insurance with a particular insurer. The credit union may require that the insurance chosen by the member meet with its approval, but must not unreasonably withhold this approval.
- A credit union shall not lease or provide space in any of its offices to a person placing insurance or share premises with an insurance company, agent or broker. Where a credit union carries on business adjacent to the office of an insurance company, agent or broker, the credit union must clearly indicate to its customers that the two premises are separate and distinct.
- A credit union shall not provide a telecommunication s device that is primarily used by customers to link a customer with an insurer, broker or agent.
- A credit union shall not promote an insurance company, agent or broker unless the company, agent or broker deals only in authorized types of insurance or the promotion is of a general nature and takes place outside the offices of the credit union. A credit union shall not promote an insurance policy of an insurance company, agent or broker unless the policy is for an authorized type of insurance, the policy is provided by a non-profit corporation or the promotion is of a general nature and takes place outside the offices of the credit union.

Insurance Ombudsman

The Superintendent must appoint an employee of the Financial Services Commission of Ontario as an insurance ombudsman who is responsible for inquiring into complaints about an insurers business practices. After considering the complaint and attempting to resolve the dispute, the insurance ombudsman may recommend to the Superintendent that the Superintendent inquire into the complaint

Regulation of Insurance Intermediaries

Licensing Requirements

Every person who carries on the business of an insurance agent or an insurance adjuster must be licensed under the Act.

The Superintendent will grant a license to an agent on application and payment of the prescribed fee if the Superintendent is satisfied the applicant

- is of good character,
- has a reasonable educational background,
- has a satisfactory record in the business,
- has passed a qualifying examination;
- is a suitable person to receive a license, intends to hold himself, herself, itself out publicly and carry on business in good faith as an agent;
- has not made an application for the purpose of acting as an agent in respect of a particular risk(s) or directly or indirectly to obtain an agent's commission for insurance on the applicant's own property or life or the property and lives of the applicant's family or employer or fellow employees;
- is not in a position to offer inducement, or use coercion or undue influence in order to control, direct, or secure insurance business. [The regulations contain a list of persons considered to be in positions to offer inducement or use coercion or undue influence and who may not be granted a license.]

Exemptions to Licensing

A person is not required to be licensed if:

- they collect insurance premiums but do not solicit or negotiate insurance contracts;
- they are an officer or salaried employee of the head office of a fraternal society who solicits insurance on behalf of society but receives no commission or who is not an officer or employee of a society but solicits insurance for the society part time;
- an officer or salaried employee of the head office of an insurer who solicits life insurance and accident and sickness insurance on behalf of the insurer and does not receive a commission;
- a transportation company or officer or employee of a transportation company when acting as agent for an insurer with respect to travel, accident and baggage insurance.

Licensing Regime

Licenses shall be issued for three types of license:

- life insurance, or life and accident or life and accident and sickness insurance;
- for accident and sickness insurance; and
- classes of insurance other than life insurance.

An application for a license must be accompanied by a certificate of the insurer that the applicant is appointed to act as the insurer's agent and that the applicant is suitable to carry on business as the insurer's agent.

Where the applicant is a corporation, the application must include the copy of the instrument of incorporation, the names of directors and officers and shareholders with voting rights and the names of all individuals, corporations and partnerships that are authorized to act as agents on behalf of the applicant.

A license for life insurance or life and accident and sickness or both authorizes the agent to act for one insurer only.

To be licensed for accident and sickness insurance or another class of insurance the person must work or intend to work on a full time basis (30 hours per week). A license will only be granted in respect of life insurance if the applicant intends to have his or her whole business in the provision of financial services.

Licensing Authority

The Superintendent is responsible for issuing accident and sickness licenses and licenses for other classes of insurance than life insurance.

The Superintendent may recognize a life insurance organization for the purpose of regulating the operations and standards of practice and business conduct of life insurance agents.

Powers of Licensing Body

No rule making authority or power to levy fines; licensing standards and requirements are set by regulations.

Investigation and Discipline

Grounds for Investigation

[See below]

Investigation Powers

The Superintendent may examine (includes an inquiry appraisal, audit or inspection) any person licensed under the Act, and it is a condition of licensing that the person facilitate the examination. The person being examined must provide required reports and information and open and produce their records as required. A person undertaking the examination may enter any place at a reasonable time and remove or make copies of documents.

Sanctions and Penalties

The Superintendent may suspend, revoke or refuse to issue a licensee if it appears to the Superintendent that the licensee has

- violated a provision of the legislation or license
- made a material misstatement or omission in application for license
- guilty of fraudulent practice
- demonstrated incompetence or untrustworthiness
- employed an unlicensed person as an agent.

The Superintendent may also suspend or revoke or refuse to issue a license if during the term of the license the licensee has carried on business other than as an agent or carried on business other than on a full time basis, or if license for life insurance has carried on a business that is not in the provision of financial services. This does not apply if the other business is that or travel agent or real estate agent, the licensee operates in a small community, the licensee has held the license for life insurance for at least two years and has the required qualifications.

Recourse	Where the Superintendent plans to suspend or cancel a license or refuse to issue a license the Superintendent may and will on request of licensee or applicant appoint an advisory body consisting of a representative of insurers, a representative of agents and a representative of the Superintendent (who will act as the chair) to hold a hearing and make a report and recommendation to the Superintendent. The licensee or applicant may appeal a decision of an advisory body to the Financial Services Tribunal.

JURISDICTION – SASKATCHEWAN

Marketing of Financial Products and Services[3]

Tied Selling

A credit union must not exercise pressure on a member or customer to place insurance for the security of the credit union with any particular insurance company; a credit union may require that it approve the insurance chosen by its member or customer.

Under the insurance legislation, no life agent may coerce or propose to coerce, directly or indirectly a prospective buyer through the influence of a business or professional relationship or to give a preference with respect to the placing of insurance that would not otherwise be given in effecting a life insurance contract.

Rebating

No specific provisions respecting rebating in the legislation – covered under the Life Insurance Council of Saskatchewan By-laws.

Disclosure Requirements

Disclosure of Marketing Arrangements

A loan broker must before providing services or products to a consumer provide a written statement setting out

- the loan broker's name, address and other identifying information;
- the name of the consumer
- the names, if known, of the lenders or potential lenders from whom the loan broker will attempt to obtain a loan;
- the amount of the loan;
- the date by which the loan is expected to be made to the consumer;
- the total amount that the loan broker will charge and any other amounts that the consumer will pay for obtaining the product or service.

Disclosure in Advertising

No specific provisions, except for cost of credit disclosure (see below).

Confidentiality Requirements

Under the *Credit Union Act*, no person is permitted to disclose any information with respect to a business transaction with the credit union or with respect to any record of the credit union. However, information with respect to a members' or customer's business transactions or records may be released with the written authorization of the member or customer. Unless the member or customer has provided written authorization, no person is permitted to disclose information to another person to enable that person to promote or sell a retail financial service, other than a retail financial service offered by the credit union in the name of the credit union.

Prohibition – Unfair

The Superintendent of Insurance has the power to require that an insurer

---

[3] The *Trust and Loan Corporations Act*, 1997, and *the Credit Union Act*, 1998, both contain provisions respecting "market practices" and "market conduct" that are not yet proclaimed.

Contracts

file with the Superintendent a copy of any policy or endorsement issued or to be issued by the insurer. Where the Superintendent is of the opinion that the policy or endorsement is unfair, fraudulent or not in the public interest, he or she may make a report to the Minister, who, may after a hearing, order the Superintendent to prohibit the insurer from issuing such form of policy or endorsement. The Superintendent will approve the form of application, policy endorsement, renewal or continuation certificate with respect to auto insurance, but policies other than automobile insurance related are in practice not normally reviewed.

Restrictions on Terms

There are no restrictions or prohibitions on the use of terms, including use of term guarantee or deposit. [Restrictions may be set out in Standards of Sound Business Practices.]

Substitute Action

Where the Superintendent of Insurance, or the Superintendent of Financial Institutions, is satisfied that a consumer has a cause of action with respect to a transaction involving the products or services of an insurer, agent or adjuster, or trust or loan corporation, and the Superintendent considers the conduct unconscionable or deceptive, the Superintendent may with the written permission of the consumer, institute or assume conduct of the proceedings for the purposes of enforcing or protecting the consumer's rights respecting a contravention of the legislation.

Life Insurance Replacement

A life insurance agent must not offer inducement or use coercion or undue influence in order to control, direct or secure insurance business, or to induce or attempt to induce, the lapse or surrender of a contract of life insurance and its replacement. A life insurance agent must not make or deliver an incomplete comparison of any policy with that of another insurer in the solicitation of insurance.

Other Market Conduct Rules

Restrictions on Credit Unions and Insurance

A credit union may not promote an insurance company, agent or broker unless it is for types of insurance that the credit union is authorized to undertake, or the promotion takes place outside a branch of the credit union and is general in nature (all of the credit union's customers, credit card holders or the general public).

A credit union is also prohibited from:

- providing to an insurance company, agent or broker, a list of the credit union, or its subsidiaries, members, customers or employees;
- carrying on business in Canada in premises adjacent to an office of an insurance company, agent or broker unless the credit union clearly indicates to members and customers that the credit union and its premises and separate and distinct from the office of the insurer, agent or broker.

Loan Brokers and Deposit Agents

No loan broker may contact a person if that person has requested that he or she not be contacted by the broker.

Networking

The *Trust and Loan Corporations Act, 1997,* specifically provides that Saskatchewan loan and trust corporations may network by

- acting as an agent for any person in respect of any service that is provided by a financial institution, or body corporate that the corporation is permitted to have a substantial investment and entering into any arrangement with any person in respect of the provision of that service; and

- referring any person to such financial institution or body corporate.

The *Credit Union Act, 1998* provides that credit unions may network by:

- acting as an agent for another credit union for the provision of a service provided by that credit union or referring any person to another credit union;
- acting as an agent for any person in respect of any service that is provided by a financial institution, or body corporate that the credit union is permitted to have a substantial investment and entering into any arrangement with any person in respect of the provision of that service; and
- referring any person to such financial institution or body corporate.

Enforcement

Under the insurance, trust and loan corporation legislation, where the Superintendent is satisfied that a person has contravened a provision of the act, the Superintendent has the power to order that person pay the cost, to a maximum of $100,000, of producing material as specified by the Superintendent to promote education or knowledge in areas related to consumers and the activities of insurers or corporations.

The Superintendent also has the authority to issue a cease and desist or compliance order where a person is acting in a way as to harm the interests of consumers.

Consumer Protection

Under the insurance legislation, the insurance councils may engage in programs of consumer protection designed to inform consumers about insurance services.

Cost of Credit Disclosure

The *Cost of Credit Disclosure Act* applies to insurance companies when making loans. The Federal Disclosure of Interest Regulation was adopted by reference for trust and loan companies.

Regulation of Insurance Intermediaries

Licensing Requirements

Any person acting as an insurance agent must be licensed under the act as an agent or as a salesman of a licensed agent. No agent may engage in the business of insurance brokerage (where insurance brokerage means an arrangement or agreement under which the agent is held to be the agent of the insured and not an insurer) unless that person is specifically authorized by their license to engage in insurance brokerage business.

No person may act as an insurance adjuster unless that person holds a license under the act as an adjuster or the representative of a licensed adjuster.

Exemptions to

No explicit exemptions to the licensing regime. [Exemptions may be dealt

Licensing

with under insurance council by-laws.]

Licensing Regime

Every application for a license as an insurance agent must be approved in writing by an insurer or general agent to be represented by the applicant, certifying to the good business reputation of the applicant, the applicant's qualifications and knowledge of the business of insurance.

Every application for a license as a salesperson must be accompanied by a certificate given by a licensed agent certifying that the applicant, if granted a license, will act as a salesperson representing that agent. The salesperson can only work for the agent named in their license. A salesperson can not be licensed for life insurance.

The holder of an agent's license for all classes of insurance other than life, may act as agent for any licensed insurer or general agent, and may, if specifically authorized, engage in insurance brokerage business. A licensed life agent may act as agent for only one insurer.

Every application for a license as a representative of an insurance adjuster must be accompanied by a certificate given by a licensed adjuster certifying that the applicant, if granted a license, will act as a representative of that adjuster.

The Superintendent may grant a license if the applicant is suitable to be licensed and the proposed licensing is not for any reason objectionable. The Superintendent may investigate and if for any reason is of the opinion that the applicant should not be granted a license the Superintendent may refuse the application.

When an agent ceases to be an agent of an insurer or general agent named in the agent's license, or a representative ceases to act for the adjuster named in the license, the insurer or general agent or adjuster must immediately notify the Superintendent. Where a salesperson ceases to represent the agent named in their license, the agent must immediately notify the Superintendent and receipt of such notice operates as the suspension of the salesperson's license. An insurer or general agent who fails to provide this notification is guilty of an offence (and subject to an administrative penalty).

Licensing Authority

Under the legislation the Superintendent is responsible for licensing of insurance agents and salespeople and for suspending and canceling licenses. Responsibility for licensing has been delegated by regulation to three councils: the General Insurance Council, the Life Insurance Council and the Hail Insurance Council.

Powers of Licensing Body

Each council is responsible for the making of bylaws to establish:

- the educational, training, and other standards for persons to be licensed;
- the ethical, operational and trade practices for persons issued a license;
- standards of conduct, competence and proficiency and ongoing training and education for licensees;
- providing for the investigation of complaints and the adjudication and mediation of disputes regarding services provided by licensees or persons that the council has the authority to issue a license;

- providing for the enforcement of the council's bylaws.

In addition, to the bylaws established by the council, the Superintendent may initiate new bylaws or amendments to bylaws or suspend or cancel existing bylaws and cause the council to publish in the Gazette any bylaw the Superintendent requires be published.

Investigation and Discipline

Grounds for Investigation

A license may be suspended or cancelled by a Council (as delegated by regulation) if the Council determines that the holder of a license:

- has made a material misstatement in a license application;
- has violated the legislation;
- has placed insurance with insurers other than those licensed in Saskatchewan or
- has demonstrated incompetence or untrustworthiness in acting as an insurance agent.

Immediately after refusing, suspending, canceling or making a conditional license the Council must inform the Superintendent.

Investigation Powers

The Council may investigate an applicant to determine whether the applicant should be granted a license.

A Council must refer to the Superintendent for decision any issue that comes before it that in not clearly within the scope of the Council's authority.

The Superintendent has the power to audit, inspect, investigate or exam any person to determine compliance with the Act. This includes entering premises, requiring information and making copies of records.

Sanctions and Penalties

A licensee may have his or her license suspended, canceled, reissued subject to conditions or not reissued.

A council also has the authority to assess and collect fines to be paid; and penalties for late payment of fines. A licensee may have his or her license suspended for failure to pay fines and penalties assessed.

Recourse

Before refusing, suspending, canceling or making a conditional license, the Council must notify the applicant or licensee of the intended action and the reasons for it and provide the applicant or licensee with an opportunity to be heard and provide the Council with further particulars as to why the proposed action should not be taken.

An applicant or a licensee may apply to the Superintendent for review of the Council's decision to refuse to issue, suspend, cancel or issue a conditional license or to impose a fine or penalty for late payment of a fine. Within seven days of receiving the notice of appeal, the Superintendent must set a date for the appeal. The Superintendent may dismiss or allow the appeal, vary or make a new direction. A decision of the Superintendent may be appealed to the court.

APPENDIX B: ANNOTATED BIBLIOGRAPHY

Current Thinking – Financial Sector Regulatory Reform

Appropriate Regulation for Emerging Markets: Financial Intermediation, Regulation and Corporate Governance
Thomas Hall, Milken Institute, Policy Short, December 29, 1999

Recent banking crises have focused attention on the issue of financial sector regulation in emerging markets and the impact it can have on promoting stability and providing effective early warning systems to prevent failures. This policy short presents evidence to support the need for *country specific* prudential regulatory laws. In the longer term, as emerging markets move to establishing international accounting practices, transparency and effective methods of corporate governance, integration will allow for the adoption and application of banking regulations designed for advanced industrialized countries (CAMEL-based systems). However, in the shorter term, the paper concludes, tailor-made, appropriate regulation will be more effective in decreasing the likelihood of banking crises and can better foster economic development.

Bank Regulation and Supervision: What Works Best?
James R. Barth, Gerard Caprio, and Ross Levine, August 2001

There is substantial literature to support the tenet that well functioning banks accelerate economic growth. This evidence of the beneficial effects of banking systems on economic growth, coupled with the number and significance of recent banking crises, has lead to calls for reform of the regulation and supervision of banks and the adoption of best practices world-wide. There is a strong sense that the implementation of particular regulatory and supervisory best practices would improve the safety and soundness of banks, thus providing for growth and stability. However, there is no evidence to indicate that the best practices currently being advocated by international agencies, including the Basel Committee on Bank Supervision, the International Monetary Fund and the World Bank, are "best" or that a successful practice in one country will be equally successful in another country. There is also no evidence that an extensive checklist of best practices is better than an alternative system with fewer restrictions that considers regulation and supervision as reflecting broad views about the role of government in society.

The paper assesses different broad governmental approaches to bank regulation and supervision and evaluates the efficacy of specific regulatory and supervisory approaches using a comprehensive, new database on bank regulation and supervision in 107 countries. The paper assesses the efficacy of seven specific regulatory/supervisory policy issues –

- regulations on bank activities and the mixing of banking and commerce;
- regulations on domestic and foreign bank entry;
- regulations on capital adequacy;

- deposit insurance system design features
- supervisory power, independence, resources, loan classification stringency, provisioning standards, diversification guidelines, among others;
- regulations on information disclosure and fostering private-sector monitoring of banks;
- government ownership of banks

against two broad and competing theories of government regulation:

- the *helping hand* approach, according to which governments regulate to correct market failures and that official supervision of banks, limits on bank activities, restrictions on bank entry and a deposit insurance scheme are appropriate policies to alleviate market failures and improve resource allocation; and
- the *grabbing hand approach* which is based on the assumption that government failure is as least as important as market failures and that countries with powerful official supervisors, limits on bank activities and restrictions on entry will tend to have higher levels of corruption with no corresponding improvement in bank performance and stability.

The results of the study are generally inconsistent with the *helping hand* view of regulation and more consistent with the *grabbing hand* view of government. Tighter entry regulations, restrictions on bank activities, powerful supervisory agencies, deposit insurance and government ownership of banks was not positively associated with bank performance and stability and in fact, regulatory barriers to bank entry, regulatory restrictions on bank activities, greater supervisory power and government ownership were positively associated with government corruption. The conclusion of the study was that strong government regulation will not directly focus on easing market failures and improving bank performance and stability and this supports the need for caution in exporting "best practices" from industrial to emerging market countries. The evidence suggests that regulatory and supervisory practices that force accurate information disclosure; empower private-sector corporate control of banks; and foster incentives for private agents to exert corporate control work best to promote bank performance and stability.

Bank Failures, Systemic Risk, and Bank Regulation
George G. Kaufman, presentation at a Conference on Public Regulation of Depository Institutions, November 1995.

Bank failures are widely perceived to have greater adverse impact on the economy than the failures of other business entities due to the possibility that the failure of an individual bank may produce system-wide failures or systemic risk. The basis of this paper is that the plethora of prudential regulation to prevent or mitigate bank failures is frequently ineffective and counter productive. In fact, the author contends that bank regulations actually increase the probability of bank failures and the cost of such failures and that poor bank performance over the last two decades is largely a reflection of regulatory or government failure, rather than market failure.

The author argues that although banking may be more fragile than other industries, this does not naturally imply a higher breakage or failure rate. Prior to extensive regulation of banks in the United States the failure rate for banks was slightly lower than for non-bank firms, with losses to depositors lower than losses to creditors of non banks. The introduction of regulation and the safety net provided by deposit insurance appears ironically to have increased the level of risk accepted by banks and depositors and the potential for systemic risk.

The author recognizes that the abolition of deposit insurance is unlikely and proposes three basic options for mitigating the likelihood of systemic risk and its severity if it does occur. These are:

- macroeconomic efforts to ensure the stability of asset values which is currently not possible given inadequate knowledge of what is required to achieve such results consistently;

- providing regulatory agencies with greater discretionary powers to prevent runs on the banking system, though it is not clear that regulators could do much better in the future as compared to the past in avoiding serious agency problems and moral hazard behaviour by banks; and
- imposing a more risk based approach to the regulation of banks to reduce moral hazard behaviour and agency problems by regulators through requiring sufficient capital and imposing a series of sanctions in the form of structured early intervention or prompt corrective action on troubled banks that mimic the sanctions imposed by the market on troubled noninsured bank competitors in an attempt to have the banks reverse direction before insolvency. The key element of this approach is the "closure" rule requiring that regulators promptly resolve troubled institutions before their net worth declines below a set level. The level would be set so as to ensure that no losses are suffered by the depositors or the deposit insurer and that losses are restricted to bank shareholders.

Banking Systems Around the Globe: Do Regulation and Ownership Affect Performance and Stability?
James R. Barth, Gerard Caprio, Jr., and Ross Levine, Milken Institute, Policy Brief, Number 15, July 24, 2000

There is an extensive body of literature and study regarding the related issues of whether to limit commercial banking powers, restrict the mix of banking and commerce and privatize state-owned commercial banks. This paper collects a significant amount of data on commercial bank regulation and ownership in 60 different countries for the purpose of evaluating the link between regulatory ownership practices and banking performance and stability.

Based on the analysis of the data, the paper makes the following conclusions:

- there is no reliable, statistical relationship between regulatory restrictions on commercial bank powers to engage in securities, insurance or real estate;
- there are no positive effects from restructuring the mix of banking and commerce;
- countries with greater regulatory restrictions on securities activities of commercial banks have more fragile financial systems and substantially higher probability of suffering a major banking crisis;
- restrictions on mixing banking and commerce are associated with less financial stability;
- there is an association between greater state ownership of banks and more poorly developed banks, non-banks and stock markets.

Based on these findings, the authors conclude that it would be difficult for someone to argue that restricting a commercial banks powers and activities and ownership of non-financial firms either benefits or harms the financial sector. The authors include the caveat that the paper is based on an ongoing research project and the findings and conclusions should be viewed as a progress report. However, they believe that the research and the paper add a significant element to the ongoing debate about appropriate banking reforms.

Choosing the Right Financial System for Growth
James R. Barth, Daniel E. Nolle, Hilton L. Root and Glenn Yago, Milken Institute, Policy Brief, Number 8, February 28, 2000

Based on the analysis of comprehensive global financial data, this paper concludes that the size of a country's financial system and the degree of private ownership positively impact the country's GNP per capita whereas restrictions on banking activity and concentration in the banking sector have a negative impact on GDP. The study also concludes that too great a reliance on banks, as opposed to capital markets, can lead to costlier crises and suggests that banks and capital markets are compliments rather than substitutes in channeling funds from savers to investors.

Based on these findings, certain policy directions are recommended. The paper suggests that both developing and developed countries should encourage prudent and diversified financial system growth through

- privatizing state owned banks where effective competition among the resulting private banks can be assured through dispersed private ownership and the development of capital markets as competition to banks; and
- the need for appropriate legal, regulatory and enforcement regimes to allow capital markets to develop and thrive thus impacting general economic growth and prosperity.

Financial Regulation in South Africa

Hans Falkena, Roy Bamber, David Llewellyn, Tim Store, South Africa Financial Sector Forum, 2001

This paper is designed as a research, background report and is directed at those interested in, or affected by, financial sector regulation. The overall goal of the paper is to provide comprehensive information about the theory and practice of financial regulation, the goals and objectives, targets and instruments or regulation and the appropriate balance between regulation and market incentives. The paper also discusses international trends in regulation and how regulation evolved in South Africa and its possible future regulatory regime.

The paper outlines the underlying philosophy of financial sector regulation which implies that both regulatory authorities and regulated parties have an interest in the creation and maintenance of an effective and efficient system of regulation. At a broad, practical level the objectives of regulation are: 1) securing systemic stability in the economy; 2) ensuring institutional stability, safety and soundness; and 3) promoting consumer protection. The intermediate goals of systemic stability are: a competitive market infrastructure, acceptable maturity and currency mismatches, acceptable cross market exposures, sufficient market depth and liquidity, securities markets as an alternative to intermediaries, and regulatory effectiveness, efficiency and economy. The intermediate goals of institutional safety and soundness are: adequate capital resources, proper risk assessment, proper financial institutional and market infrastructure, suitable (fit and proper) directors and management, global institutional competitiveness, and competitive neutrality. The intermediate goals of consumer protection are: integrity and fairness, competence, transparency and disclosure, adequate access to retail financial services, protection of retail funds, and retail compensation schemes.

As well, a balance must be achieved through externally imposed, prescriptive and detailed rules and the regulatory creating incentives for appropriate behaviours. The paper contends that a robust financial system requires three elements:

- proper decision making and control within financial institutions with effective risk analysis as well as management and control systems;
- an efficient regulatory and supervisory regime for financial institutions; and
- sound incentive structures for all parties, including regulators.

The paper then discusses a variety of alternative "regulatory regimes" to achieving the objectives of financial regulation which combine various components and instruments of regulation, including rules, official monitoring and supervision, intervention and sanctions, incentive contracts and structures, market monitoring and discipline, corporate governance and discipline and accountability of regulators.

The paper contends that re-regulation and de-regulation efforts should be subject to the specific test of whether the level and type of regulation is effective and efficient and precisely related to the goals that it is trying to achieve. In this regard outlines and discusses an integrated target- instrument approach to financial regulation.

Financial Stability in Emerging Market Economies: A strategy for the formulation, adoption, and implementation of sound principles and practices to strengthen financial systems

Report of the Working Party on Financial Stability in Emerging Market Economies, Bank for International Settlements, April 1997.

The paper contends that the financial stability of an economy depends on two inter-related fundamental set of factors: the first comprises the macroeconomic and structural *conditions in the real economy* bearing on financial decisions and which form the environment in which the financial system operates and the second is the *robustness* of the financial system itself, comprising the financial markets, institutions and arrangements through which financial transactions are carried out. Instabilities and distortions in the real economy will impact the financial sector, but a robust financial system can lower the risk of problematic real economic conditions.

The paper sets out the key features of a robust financial systems:

> *flexibility* – the system continues to operate efficiently in a full range of economic circumstances and when economic conditions are changing rapidly;
>
> *resiliency* – markets continue to function in a reliable and expeditious way in the face of economic disturbance;
>
> *stability* – the system is internally stable in that it does not itself generate major financial shocks or magnify external shocks that can lead to a financial crisis.

The paper goes on to outline that the robustness of a financial system is dependent on how well the system performs three basic functions:

- Maintaining appropriate incentives for financial players – appropriate incentives are essential to ensure that investors, creditors, owners and managers need to reap the full gains but also bear the financial costs and risks of their financial decisions. Markets must also be able to exercise adequate discipline of the market ;
- Generating available information bearing on financial decisions – timely access to relevant and reliable information is essential for effective financial decisions, as well as market discipline, corporate governance and supervisory oversight;
- Providing the necessary capabilities for institutions and individuals to respond effectively to market incentives and utilize information – to respond effectively individuals and institutions must also have the capacity and capability to implement their financial decisions. This means that there needs to be a robust infrastructure to ensure that transactions are carried out reliably, in a timely manner and are enforceable, that information is disseminated adequately and that there is a sufficient array of markets and financial vehicles to allow actors to allocate resources effectively and diversity risk. Financial actors need to be free of undue regulatory constraints or other legal restrictions in order to carry out transactions efficiently and effectively.

The paper also outlines critical areas for action that are necessary to ensure a robust financial system:

- The development of a sound institutional and market structure including, establishing a legal framework to ensure property rights are well-defined and to promote a sound credit culture; improving the quality, timeliness and relevance of financial information used by market participants and regulators to assess quality, credit worthiness and condition of financial institutions; and promoting the development of an array of financial markets and instruments to enhance financial resilience and to allow for effective management of risk.

- The development of a system of market discipline and competition through introducing incentives to exert discipline over financial institutions; removing unnecessary barriers and restrictions; and reducing the vulnerability of the financial system to particular risks including abuse of the banking franchise.
- The establishment of a independent supervisory and regulatory authority supported by the necessary regulatory rules and framework, including a well defined policy and strategy for responding to the prospective insolvency of financial institutions, with sufficient powers and resources to effectively carry out their supervisory function.

Guidance for Developing Effective Deposit Insurance Systems
Financial Stability Forum, September 2001

In response to plans in many countries to establish a deposit insurance system, the Financial Stability Forum (FSF) established a Task Force to develop guidelines for effective deposit insurance systems.

The report of the Task Force makes three general findings:

- Explicit and limited deposit insurance is preferable to implicit coverage if it clarifies obligations to depositors and creditors and limits the scope of discretionary decisions that may result in arbitrary actions;
- To avoid the problems of moral hazard and to ensure that the deposit insurance system is credible to the public, the deposit insurance system must be properly designed, well implemented and easily understood;
- In order to be effective, the deposit insurance system needs to be an integral part of a well-designed financial safety net, supported by strong prudential regulation and supervision, effective laws that are enforced, and sound accounting practices and disclosure regimes.

The report also identifies and discusses the issues and considerations related to the various forms of deposit insurance and which need to be addressed when adopting or reforming the system of deposit insurance. The first step is to specify appropriate public policy objectives for the system to be adopted or modified and ensure that the implications are understood. Generally, these public policy objectives can be classified under three broad categories :1) those contributing to the stability of the financial system; 2) the protection of less-financially-sophisticated depositors; and 3) other. Though there is a high degree of commonality between the objectives, there is considerable variation in how the objectives can be achieved and for this reason the implications and trade-offs must be clearly identified and articulated and considered in the development of the appropriate deposit insurance.

Following the elaboration of public policy objectives, a situational analysis of the local conditions and factors that will impact the design of the system must be undertaken. This self assessment includes a review of the state of the economy, current monetary and fiscal policies, the state and structure of the banking system, public attitudes and expectations, the strength of prudential regulation and supervision, the legal framework, and the soundness of accounting and disclosure regimes.

The report also provides a framework for the design of an effective and credible system. The first step is the development of the specific mandate, powers and organizational structure of the deposit insurance entity consistent with the public policy objectives and taking into account the situational analysis. It is important to bear in mind that there is no one right structure. The second step is to consider membership and coverage issues, again in relation to the public policy objectives underlying the system. The report maintains that explicit eligibility rules should exist and be transparent and membership should generally be compulsory. The source and nature of funds to support the system must also be specifically established and regularly publicized to support and strengthen the credibility of the system. Finally, the report recommends that a continuous improvement process, including the review of the underlying public policy objectives and the framework for the system be established to ensure that the system is meeting and continues to meet its objectives.

Re-Engineering Insurance Supervision
Lawrie Savage, for the World Bank (Joint product of the Financial Sector Development Department and the Infrastructure and Financial Markets Division, Inter-American Development Bank), December 1998.

This paper provides an analysis and discussion of the reform of insurance regulation, particularly as it applies to developing countries. Many countries are considering reforming, or establishing a comprehensive system of regulation of their insurance systems and strengthening their supervision. Their goal is two-fold: to put in place a supervisory system that will facilitate the growth of a sound private insurance industry while also providing for the protection of consumers of insurance products. The author contends that consumer protection has two aspects – the protection against losses arising from the insolvency of institutions and the protection against losses caused by fraudulent practices and other market conduct abuses. Both solvency supervision and market conduct supervision have a role to play in underpinning and ensuring a stable, vibrant and financially sound financial infrastructure that will benefit the economy as a whole. The author's analysis is designed to help countries choose the program of regulation and supervision that best fits their circumstances.

The author draws on experience in industrial countries that have examined the reasons for why financial institutions have failed. He concludes that the old approach to supervising the financial sector—covering a broad range of issues and devoting considerable energy to verifying data—must be replaced by a more focused approach, getting supervisors to focus on management performance and business strategy in high-risk firms. Regulators in jurisdictions that have updated their systems with this approach in mind now see their main task as gauging the financial risk or risk profile of each company and allocating most of their resources to the higher-risk situations. In doing so, their objective is to understand a firm's business strategy, to assess the firm management's competence and appetite for risk, and to assess the firm's outlook and financial viability. The author identifies the priorities needed in the reform of insurance supervision, including increased emphasis on corporate governance, and suggests steps needed for change - and helpful ways for officials to organize. The author also emphasizes the special role played in supervision by industry specialists such as the auditors and actuaries who support insurance companies.

The author discusses not only issues associated with the supervision of solvency and financial strength but ways to protect consumers. He focuses on the need to establish a level playing field between insurers and consumers that will add to the stability of the insurance marketplace. Key aspects of establishing a level playing field include: knowledge and information (which has two dimensions: the need to ensure that insurance salespeople have a sufficient degree of knowledge and expertise and the need to ensure that an adequate amount of information, relevant to the consumer's personal situation, is conveyed by the salesperson to the consumer); consumer recourse and complaint monitoring; monitoring of marketplace activities; dispute resolution; rate regulation; marketplace supervision; and the control and prohibition of unlicensed insurers and intermediaries

Regulation in a Multisectored Financial Services Industry: An Exploratory Essay Professor Howell E. Jackson (Based on a legal casebook, "Regulation of Financial Institutions", 1999, coauthored with Edward L Symons

This essay fleshes out the two principle themes introduced in the casebook, "Regulation of Financial Institutions": why the systems of financial regulation differ so significantly for the various sectors of the financial services industry; and how to deal with the problems of intersectoral competition and regulatory arbitrage that the multifaceted system of regulation requires. The paper considers such issues as: whether it is a desirable development that banks, insurance companies and insurance companies are increasingly in competition with one another and will this lead to better services at lower costs? And, given this increasing intersectoral competition, should greater effort be made to move to a more functional approach to the regulation of the financial sector.

The analysis of these themes and issues is broken down into five parts:

- An overview of the spectrum of financial activities;
- A discussion of the basic policy justification for the regulation of financial transactions, with the author claiming that the most important policy consideration is the control of risk. The author maintains that the reason for government imposed risk regulation is two-fold – it addresses the inability of public investors to negotiate appropriate safeguards on their own behalf and the negative externalities associated with financial losses and institutional failures;
- A description, in general terms, of the principal regulatory strategies employed by the US to regulate risk in each of the sectors of the financial services industry (tools include disclosure strategies, general standards of conduct, portfolio shaping rules, bonding arrangements) with the observation of the author that though the goal of the regulation in each sector is to control risk, the tools used vary considerably;
- An exploration of the policy implications of the preceding sections in the context of the regulatory dilemmas that arise when functionally similar financial activities are governed by different legal and supervisory regimes. The author contends that consistent with basic economic theory private actors will attempt to organize their activities in order to be governed by the lowest cost regulatory system and that a large amount of financial services sectoral activity over the past twenty years bears this out – activity on both the part of the regulated sector and the regulatory to undertake regulatory reclassification;
- A final section examining the various reform proposals for a move to a functional regulatory system, which the author concludes is not the most desirable regulatory structure (due to practical difficulties of pure functional regulation including cost considerations, inconsistencies in regulatory strategies, and special problems associated with regulation of holding companies), but rather the better path for regulatory reform is a more pragmatic system that has only partial codification of the principles of functional regulation.

Some Lessons for Regulation From Recent Bank Crises David Llewellyn, Loughborough University, Prepared for Finance and Development Research Programme – Working Paper Series, December 1999

The purpose of the paper is to identify "lessons" that can be gleaned from recent banking crises specifically lesson aimed at the design of an "optimum regulatory regime", where regulatory regime means the broad set of regulatory rules, incentive structures operating in banks, monitoring and supervision, disclosure requirements, market disciplines and corporate governance arrangements in banks. The underlying theme is that while external regulation plays an important role in ensuring a safe and sound financial sector, this role is limited and of increasing importance are the other aspects of the regulatory regime to ensuring the stability of the sector.

In making its case, the paper

- provides a brief overview of recent banking crises and the economic costs of the crises;
- outlines and considers the common elements in the crises;
- discusses the multi-dimensional nature of the crises and the contributing factors of bad banking practices, perverse incentive structures and moral hazard, ineffective regulation, weak monitoring and supervision, weak market discipline on banks and unsound corporate governance arrangements;
- reviews the impact of liberalization on the banking system, making a distinction between the transitional effects associated with shifting from one regime to another with the steady state effects of a de-regulated financial system;
- outlines the characteristics of a robust financial system; and
- sets out a set of principles for a regulatory regime designed to lower probability of distress in the banking sector – regulation, monitoring and supervision, incentive structures, intervention, market discipline, and corporate governance.

Systemic Banking Crises – From Cause to Cure
James Barth, Thomas Hall and Glenn Yago, Milken Institute, Policy Short, August 23, 2000

Recent research indicates that a large number of the major national banking crises have occurred when macroeconomic fundamentals are weak – real growth is low and inflation is high. High interest rates and explicit deposit guarantees also seem to contribute to occurrence of domestic banking crises. This paper summarizes a larger research paper examining the impact of national financial structures and banking sector regulatory restrictiveness on the likelihood and cost of banking crises. This short paper provides the tentative and early conclusion that though financial structure does not appear to have a contributory effect on the likelihood and cost of banking crises, regulatory restrictiveness not only contributes to the increased likelihood of a crisis but may contribute to the cost of the crisis.

The Cost of Regulatory Compliance in the Canadian Financial Sector
Brent Sutton, The Conference Board of Canada, Report 120-94, May 1994. [Report to be updated in Summer 2002]

This paper was prepared in response to the growing concern in the regulated sector about the high and increasing costs of regulatory compliance and the impact of those costs on the financial industry's competitiveness in both domestic and foreign markets. It is recognized that sound regulation is essential to a stable and competitive financial system; therefore the issue is not whether financial institutions ought to be regulated but rather "what is the optimum level of regulation". A central difficulty with determining the optimal level of regulation is the lack of information on the actual costs of regulatory compliance in Canada (the paper indicates that a recent federal report concluded that federal financial sector regulation in the United States equaled about $500 billion). This study for the first time would measure certain regulatory costs through a comprehensive survey of Canadian financial institutions.

The paper categorized total regulatory costs for the financial sector into four categories:

- administrative expenses;

- compliance costs (internal costs of complying with regulations, transaction costs related to the institutional structures set up to meet regulatory requirements, transition costs of meeting new regulatory requirements, and opportunity costs related to the loss of business due to regulatory restrictions);
- policy formation costs (costs of formulating policies and regulations); and
- indirect regulatory costs (cost to the economy of regulation).

The study only measured regulatory costs associated with administrative expenses and internal compliance costs due to the complexity of measuring the other types of regulatory compliance costs, particularly those costs that do not involve a specific outlay of corporate resources. The study also did not attempt to undertake a cost benefit analysis of the regulatory costs.

The paper found that administrative expenses and internal compliance costs totaled $330.7 million in 1992. The study determined that regulatory compliance costs have a large fixed component to them as demonstrated by the fact that smaller institutions pay a higher percentage of their operating expenses on regulatory compliance than larger institutions. The study also found that about $3 of internal compliance costs is borne for every $1 spent by regulatory agencies.

With respect to the other regulatory costs not specifically measured in the study, the paper included a discussion of some of the issues respecting these costs based on feedback from industry members. Industry members indicated that dealing with multiple regulators imposes a significant compliance cost on the industry. This is most significant in the area of reporting requirements with an estimate that compliance costs could be reduced by $30 million by the removal of duplication of unnecessary information requests. The industry suggested that regulatory compliance costs could be significantly reduced through the establishment of a national regulator; alternatively the establishment of the designated jurisdiction approach could achieve the same end. The industry also suggested the creation of a regulatory review committee to examine specific regulations to assess their value and the need to streamline regulatory structures as ways to reduce the overall costs of regulation.

The Economic Rationale for Financial Regulation
David Llewellyn, Financial Services Authority, Occasional Paper Series, April 1999

The focus of this paper is on the economic rationale for regulation of the financial sector. The paper makes a distinction between the *objectives* of regulation – what outcome it is trying to secure; the *rationale* for regulation – why regulation is necessary if the objectives are to be achieved; and the *reasons* for regulation – why in practice regulation takes place. The author is adamant that the three core objectives of financial sector regulation are: 1) to sustain systemic stability; 2) to maintain safety and soundness of financial institutions; and 3) to protect the consumer. However, the author maintains that the regulatory system must be clear about what it is that the consumer is being protected against and that the purpose of regulation should be limited to correcting for identified market imperfections and failures.

The paper recognizes that some academics are skeptical of the benefits of regulation on the basis of various critiques including that: there are no market failures, and, if they do exist, they are not sufficiently serious to warrant intervention; regulation may not solve these failures, or if it does, only by imposing costs that exceed the costs of the original problem; serious moral hazards may arise when regulation is imposed and regulation imposes a wide range of costs which are ultimately borne by the consumer. On the other hand, the paper points out the counter view that recent large bank failures have prompted the need for more effective regulation and supervision given that these failures are attributed to bad incentive structures, weak management and control systems within banks, inadequate information disclosure and poor regulation, monitoring and supervision.

The paper analyzes seven components for the economic rationale for regulation and supervision of banking and financial services:

- potential systemic problems associated with externalities (a particular form of market failure);
- the correction of other market imperfections and failures, including inadequate information, asymmetric information, lack of capacity to assess quality and safety and soundness of the product);
- the need for monitoring of financial firms and the economies of scale that exist in this activity;
- the need for consumer confidence which also has a positive externality;
- the potential for *grid lock* (firms adopt hazardous strategies because they secure short term advantages and they have no confidence that their competitors will not behave hazardously, or competitive conditions exist that induce banks to behave in line with other banks and incur excessive risk in the process) with associated adverse selection and moral hazard problems;
- moral hazard associated with the revealed preference of governments to create safety net arrangements: lender of last resort, deposit insurance, and compensation schemes;
- consumer demand for regulation in order to gain a degree of assurance and lower transaction costs.

To address these components, the paper outlines and discusses two generic types of regulation and supervision:

- Prudential regulation that focuses on the solvency and safety and soundness of financial institutions. The rationale for this form of regulation being that consumers are unable to judge the safety and soundness of firms and can not control subsequent behaviour of the firm after the purchase of the financial product.
- Conduct of business regulation that focuses on how financial firms conduct business with their customers. This form of regulation is designed to minimize the principal-agent problems that can arise when principals and agents do not have equal access to inform or equal expertise to assess the information.

Universal Charter Options: Providing a Competitive Advantage for State Financial Institutions

North Carolina Banking Institute, University of North Carolina, School of Law, 2002

This article discusses the concept of universal bank charters as a possible approach to be adopted by state governments to achieved financial modernization of state banking systems. Financial modernization, including re-regulation, is required to meet the demands of a changing marketplace and to ensure that state banks can compete with federal institutions.

The article discusses the concept of universal banking - an institutional arrangement of financial services implemented through structures such as a financial holding company - vis a vis universal bank charters – broad uniform powers granted by charter to all types of state chartered banking institutions. The paper suggests that the universal charter approach may be preferable because it addresses regulatory structure and simplification as well as competitive equity issues. The author also discusses the advantages and drawbacks of the universal charter approach and whether the approach should be adopted in North Carolina.

Recent Canadian and International Developments

REFORM OF CANADIAN (FEDERAL) FINANCIAL SECTOR REGULATION

Every five years, the legislation governing Canada's federally regulated financial institutions (banks, trust and loan companies, insurance companies and credit cooperative associations) is subject to review. In 1996, in recognition of that the Canadian financial services sector was undergoing significant and rapid change, the government announced the establishment of the "Task Force on the Future of the Canadian Financial Services Sector". The report of the Task Force was released in September 1998[4]. The Task Force concluded the Canadian financial services sector was, for the most part, well-positioned to meet the changes and challenges impacting and occurring in the sector. However, it also made a number of recommendations for enhancing the competitiveness, improving the regulatory framework and empowering consumers.

Based on the Task Force's work, the federal government developed a comprehensive, balanced and inter-related package of amendments to the federal financial sector regulatory regime:

- *to promote efficiency and growth* through initiatives such as a new definition of widely held ownership to allow strategic alliances and joint ventures; a new holding company regime to provide greater structural flexibility and a new transparent bank merger review process involving formalized public input;
- *to foster domestic competition* through encouraging new entrants through liberalized ownership rules and lower minimum capital requirements, facilitating the ability of credit unions to compete by allowing the restructuring of their system, and allowing foreign banks to offer services directly to business and consumers;
- *empowering and protecting consumers of financial services* through measures to improve access to financial services, establishment of a Financial Consumers Agency and Canadian Financial Services Ombudsman, prohibiting coercive tied-selling and improving disclosure to consumer and public information available on financial institutions;
- *improving the regulatory environment* by providing the Superintendent of Financial Institutions with new and enhance posers to deal with the potential risks arising from increased competition, streamlining regulatory approval processes; reducing regulatory burden related to compliance with Canada Deposit Insurance Corporation standards, and modernizing the governance of the Canadian payments system.

Legislation to implement these reforms was passed in June 2001 (Bill C-8, *An Act to Establish the Financial Consumer Agency of Canada and to amend certain Acts in relation to financial institutions*). The reforms are also being implemented through non-legislative measures such as guidelines and statements of government policy.

---

[4] "Change, Challenge, Opportunity: Report of the of the Task Force on the Future of the Canadian Financial Services Sector", Harold MacKay (Chair), Department of Finance, Government of Canada, September 1998.

UNITED KINGDOM – FINANCIAL SERVICES AUTHORITY

On May 20, 1997, the Chancellor of the Exchequer announced the wholesale reform of financial services regulation in the United Kingdom and the creation of a new regulator, the Securities and Investments Board (SIB), responsible for both banking supervision and investment services regulation. The SIB formally changed its name to the Financial Services Authority (FSA) in October 1997.

The first stage of the reform of financial services regulation was completed in June 1998, with responsibility for banking supervision transferred to the FSA from the Bank of England. This was followed on December 1, 2001, with the implementation of the *Financial Services and Markets Act*, which transferred to the FSA the responsibilities of several other organizations: the Building Societies Commission; the Friendly Societies Commission; the Investment Management Regulatory Organization; the Personal Investment Authority; the Register of Friendly Societies; and the Securities and Futures Authority

Under the Act the FSA is required to meet four objectives:

- To maintain confidence in the UK financial system;
- To promote public understanding of the financial system;
- To secure an appropriate degree of protection for consumers while recognizing their own responsibilities; and
- To reduce the scope for financial crime.

In meeting these objectives the FSA is specifically required to take into account a number of factors or "principles of good regulation". These are:

- Using its own resources in the most economic and efficient way;
- Recognizing the responsibilities of regulated firms' own management;
- Being proportionate in imposing burdens or restrictions on the industry;
- Facilitating innovation;
- Taking into account the international character of financial services and the UK's competitive position; and
- Facilitating, and not having an unnecessarily adverse effect on, competition.

> The FSA is responsible for authorizing or approving firms to operate; setting prudential and conflict of business standards, supervising firms and the investment market and exchanges, enforcement, reducing financial crime, and engaging in international activities and maintaining ongoing contact with regulators world-wide.

Since the implementation of the *Financial Services and Markets Act*, the FSA has been fully funded by fees paid directly to it from regulated organizations. A funding formula sets out the different rates and levies for different types of institutions.

AUSTRALIAN, COMMONWEALTH (FEDERAL) GOVERNMENT - PRUDENTIAL REGULATION AUTHORITY

In May 1996, the Australian Federal government launched a comprehensive review of the regulation of Australia's financial sector. Chaired by Stan Wallis, the "Financial System Inquiry" had a broad mandate to provide a "stocktake of the results of arising from the financial deregulation of the

Australian financial system since the early 1980s. The forces driving further change will be analyzed, in particular, technological development. Recommendations will be made on the nature of the regulatory arrangements that will best ensure an efficient, responsive, competitive and flexible financial system to underpin stronger economic performance, consistent with financial stability, prudence, integrity and fairness."[5]

The Inquiry identified and discussed the forces for change including changing customer needs, technology driven innovation, and the changing financial landscape. Based on these forces for change the Inquiry concluded that there would be an increasing focus on efficiency and competition, further globalization, further conglomeration and market widening and a shift from intermediaries to markets. Based on these forces, the Inquiry identified the key issues impacting the need for regulatory reform and made recommendations for a new approach to prudential regulation of the Australian financial services sector.

The Inquiry culminated in the establishment of the Australian Prudential Regulation Authority in July 1998. The Wallis Inquiry proposed a single prudential regulatory authority (an alternative to the previous structure of specialist industry regulators) as a way to address the blurring of boundaries between traditional industry sectors and the growing importance of conglomerate groups in the financial system. The Authority is responsible for the prudential regulation of banks, life insurers, general insurers, building societies, credit unions, friendly societies and superannuation funds – prudential meaning, the establishment of standards to ensure that regulated institutions have high quality systems for identifying, measuring and managing the various risks of their business. Consistent with this, the authority has the power to require that financial institutions observe prudential standards for appropriate capitalization, liquidity and governance. In fulfilling its responsibilities, the Authority has extensive powers of investigation, intervention and administrative, but the Authority provides no absolute guarantee.

The Authority is currently engaged in large-scale policy reviews of conglomerates and general insurance and in an initiative to harmonize prudential requirements for all deposit-taking institutions. The Authority's goal, over time, is to review all present financial sector regulatory policies and make appropriate changes.

The Authority is not responsible for product disclosure standards, consumer complaints or the licensing of agents and brokers. These are the responsibility of the Australian Securities and Investments Commission.

A third organization, the Financial Sector Advisory Council, a non-statutory body responsible for providing advice on financial sector developments and policies, completes the Australian financial sector regulatory regime.

As recommended by the Wallis Inquiry, the Authority and the Australian Securities and Investments Commission, are fully funded by the industries that it supervises through annual levies on financial institutions.

UNIVERSAL BANK CHARTERS – US STATES

The need for financial modernization – both re-regulation and positive actions to respond to market demands and competitive forces – is driving various states in the United States to consider innovative ways to provide competitive equity in national versus state banking institutions and regulatory simplification.

---

[5] "Financial System Inquiry: Final Report", Stan Wallis (Chair), Commonwealth of Australia, 1997.

One approach to ensuring competitive equity between state and federally chartered banking institutions is the adoption of "parity" statutes that allow state financial institutions to conduct the same activities as federal banking institutions. "Super parity" statutes go even further and allow a state bank to conduct the same business and activities as state banks in other states. An example of this "super-parity" approach is Illinois' "super wild card" that allows a Illinois' chartered state bank to offer any product or service that is authorized for federal banks or for banks in any other state. One major issue with parity statutes, however, is that they do not address regulatory structure and simplification.

Another possibility for modernizing state banking systems, that provides for competitive equity and addresses traditional organizational issues of national and state bank charters, is the universal charter[6]. The state of Maine recently adopted a model of a universal charter system whereby under its new legislation, broad uniform powers are offered to all state-chartered commercial banks, savings banks and savings and loan associations. The distinction between each institution's separate charter has been eliminated and "universal banks" may exercise any of the existing powers belonging to an existing commercial bank, savings bank, or thrift. Additionally, the scope of powers that the regulator may now approve includes what is "convenient and useful" to the business of banking.

The Maine universal charter approach also eliminates limitations on commercial and industrial firms acting as financial holding companies and provides for limited purpose banks, such as merchant banks, non-deposit-taking trust companies and holding companies for non-insured banks. As well, the universal charter is unique in that it anticipates future permissible banking activities. Activities currently restricted at the federal level are included in the universal bank's charter and will automatically come into effect when permitted at the federal level. Thus, a universal bank is positioned to take advantage of changes in the financial marketplace without delay, whereas other financial institutions would be required to wait for a legislative amendment to take advantage of the new powers.

With respect to concerns regarding the safety and soundness of such a regulatory regime, the Superintendent of the Maine Bureau of Financial Institutions is given direction and authority to regulate in a manner to ensure "strength, stability … efficiency … [and] reasonable and orderly competition". The Superintendent must in making decisions regarding applications for transactions involving financial institutions consider certain criteria in order to ensure that the proposed transaction "contributes to the financial strength and success of the financial institution or institutions concerned and promotes the convenience and advantage of the public. These criteria include: the character, ability, and overall efficiency of the management; adequacy of capital and other resources; competitive abilities and future prospects; convenience and needs of the market area; competitive effect of the proposed transaction; and likely impact of the proposed transaction on other financial institutions. The Superintendent also has emergency powers under the universal charter including restricting banking transactions, or even closing or partially closing bank operations in a banking emergency. [For further information on Maine's "Universal Bank Charter" legislation and regulation see www.state.me.us/pfr/bkg/bkg_index.htm]

---

[6] The universal charter concept differs from universal banking in that universal banking is an institutional arrangement of financial services, implemented through structures such as a financial holding company.

The focus of regulatory activity under Maine's universal charter approach is now on the safety and soundness of the business undertaken without regard to the organizational structure of the institution.

Other states are currently considering the adoption of at least some form of universal charter approach. Wisconsin has recently adopted a voluntary, universal certification option that allows institutions that are certified to apply for increased powers and Michigan is moving in that direction as evidenced by recent financial sector regulatory reforms.

NEW BASEL CAPITAL ACCORD

In 1988, the Basel Committee on Banking Supervision[7] introduced a capital measurement system commonly referred to as the Basel Capital Accord. This system provided for the implementation of a credit risk measurement framework with a minimum capital standard of 8% by end-1992. Since 1988, this framework has been progressively introduced not only in member countries but also in virtually all other countries with active international banks, including Canada.

In reforming its financial sector legislation in 1988 and 1989, British Columbia adopted a risk-weighted approach to capital adequacy based on the 1988 Basel Capital Accord.

---

[7] The Bank for International Settlements (BIS) is an international organization established in 1974 by the central-bank Governors of the Group of Ten countries to foster international monetary and financial co-operation and serve as a bank for central banks. The BIS fulfils this mandate by acting as:

- a forum to promote discussion and facilitate decision-making processes among central banks and within the international financial community;
- a centre for economic and monetary research;
- a prime counter-party for central banks in their financial transactions;
- agent or trustee in connection with international financial operations.

One important objective of the Committee's work has been to close gaps in international supervisory coverage in pursuit of two basic principles: that no foreign banking establishment should escape supervision; and that supervision should be adequate. To achieve this, the Committee has issued a number of documents since 1975.

The Committee does not possess any formal supranational supervisory authority, and its conclusions do not, and were never intended to, have legal force. Rather, it formulates broad supervisory standards and guidelines and recommends statements of best practice in the expectation that individual authorities will take steps to implement them through detailed arrangements - statutory or otherwise - which are best suited to their own national systems. In this way, the Committee encourages convergence towards common approaches and common standards without attempting detailed harmonisation of member countries' supervisory techniques.

The Committee's members come from Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, United Kingdom and United States. Countries are represented by their central bank and also by the authority with formal responsibility for the prudential supervision of banking business where this is not the central bank. The Basel Committee meets regularly four times a year and has about thirty technical working groups and task forces that also meet regularly. The Committee's Secretariat is provided by the Bank for International Settlements in Basel.

In June 1999, the Basel Committee issued a proposal for a New Capital Adequacy Framework to replace the 1988 Accord. The rationale for the new Accord is to provide more flexibility and risk sensitivity. The existing Accord focuses on a single risk measure and has a one size fits all, broad brush approach. The new Accord will place more emphasis on a bank's own internal methodologies, supervisory review and market discipline. It will also provide more flexibility through a menu of approaches and incentives for better risk management.

The proposed capital framework is based on three pillars:

- minimum capital requirements, which seek to refine the standardized rules set forth in the 1988 Accord;
- supervisory review of an institution's internal assessment process and capital adequacy; and
- effective use of disclosure to strengthen market discipline as a complement to supervisory efforts.

Following extensive interaction with banks and industry groups, a second consultative document, taking into account comments and incorporating further work performed by the Basel Committee, was issued in January 2001. The Committee is now considering the feedback received from this second wave of consultation in the development of a final draft proposal. The goal is to introduce the new framework in 2004.

In addition to its work on the Capital Accord and Capital Adequacy Framework, over the past few years, the Basel Committee has promoted sound supervisory standards world wide through collaborative efforts with many non-G-10 supervisory authorities. In 1997, the Committee developed a set of "*Core Principles for Effective Banking Supervision*", which provides a comprehensive blueprint for an effective supervisory system. To facilitate implementation and assessment, the Committee in October 1999 developed the "*Core Principles Methodology*". [See www.bis.org/index.htm for more information on the Bank for International Settlements, the Basel Committee and the Capital Accord and Capital Adequacy Framework.]